The Solicitors' Journal
and Weekly Reporter.
(*ESTABLISHED IN* 1857.)
LONDON, MARCH 31, 1917.
ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE:
£1 6s.; by Post, £1 8s.; Foreign, £1 10s. 4d.
HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.

All letters intended for publication must be authenticated by the name of the writer.

GENERAL HEADINGS

Cases Reported this Week.

Current Topics.

Brigadier-General Edward N. Whitley.

WE ARE glad to hear that Lt.-Col. EDWARD N. WHITLEY has been promoted to the rank of Brigadier-General. Mr. WHITLEY is a member of the firm of Messrs. HIRST, WHITLEY, & AKEROYD, solicitors, of Halifax, and we gave some particulars of his career last year, when he was awarded a C.M.G. as one of the 1916 Birthday Honours (60 SOLICITORS' JOURNAL, pp. 549, 560). He has been at the Western front for two years, and has been three times mentioned in despatches. And it will be seen with satisfaction that the fact of his connection with the Territorial Force has not been a bar to high promotion. We are not sure whether any other solicitor has so far been raised to the same rank.

The Late Professor Salmond.

IT IS with the deepest regret that lawyers who care for the academic interests of their profession will have learned of Professor SALMOND'S untimely death. Only fifty-four years of age, the late jurist had been for nearly a decade a law officer in New Zealand, and for nearly twenty years one of the most distinguished of English jurists. But unlike most other men whose fame rests mainly on their scholarship and writings, Professor SALMOND was a busy practitioner and a successful advocate, no less than a great jurist, although the forum in which he achieved fame was that of a somewhat remote colony. His treatise on the Law of Torts is perhaps the greatest monument to his name; its scholarly precision, as well as its brilliant criticism of principles sometimes too hastily accepted as sound in normal treatises, has given it a unique position among modern text-books on law. The late Professor GRAY'S Rule of Perpetuities is, perhaps, the only other recent law-book in our language which the academic world of lawyers can regard as of equal excellence. His treatise on Jurisprudence, too, is a great and original work. Essentially reasonable and practical, it discards at once the somewhat narrow

doctrinarism of the Austinian School, the metaphysical unreality of German *Naturrecht*, and the rather cumbrous historical methods of MAINE and MAITLAND. The student who wishes to grasp the real meaning of juristic institutions must go to SALMOND'S work.

War Savings.

WE ARE glad to call attention to the letter we print elsewhere from the President of the Law Society, inclosing a letter from the Lord Mayor, asking for help in the War Savings movement. The actual help which can be rendered will depend on the nature of the scheme which the Executive Committee are preparing, but the circumstances of the times—dark they may be, but only dark before the approaching dawn—emphasize the necessity of a ready response.

Relief Work in Belgium.

UPON THE rupture of diplomatic relations between the United States and Germany there was some doubt as to the control of the relief work in Belgium; but a month ago it appeared settled that the American members of the Neutral Commission would remain in Belgium. Messages from Washington and Amsterdam which we print elsewhere from the *Times* shew, however, that the increasing tension of the relations between the United States and Germany has made this impossible, and Mr. BRAND WHITLOCK, the United States Minister at Brussels, and the American relief workers in Belgium are to be withdrawn. At the same time, the relief work will continue under the patronage of the Queen of the Netherlands and the King of Spain, and it is satisfactory to read that Dutchmen, and perhaps other neutrals, will take up the work which the Americans are now compelled to abandon.

Civil Conscription.

AT THE time when conscription was under consideration we pointed out that in principle compulsory civil service was indistinguishable from compulsory military service, and when one has been introduced, it is only a question of expediency whether the other should follow suit. We print on another page a further article from the *Harvard Law Magazine* for January, which we laid under contribution last week, in which the principle of legal liability for civil service is worked out in considerable detail. We by no means desire to hasten compulsory industrial service, nor to prejudice the question as to its advisability. In fact, the question is eventually, what is the best practical way of ensuring full national effort. Executive functions and Government departments we must have, but there comes a point when the multiplication of departments and officials spells waste and inefficiency; and there is the greater probability of this when the multiplication goes on in a hurry. Moreover, civil compulsion, though it has not the harshness of military conscription, may, like that, run counter to individual opinion and be a source of disaffection and consequent weakness.

The New Military Service Bill.

THE NEW Military Service Bill, the text of which has just been issued, resembles in form the previous measure—that is to say, it brings certain excluded classes within the operation of the two existing Acts. The classes in question are three, and include all those men of military age who were excluded from liability for physical reasons, namely:—(a) Home Service Territorials not suited for foreign service (first Act, Schedule 1, 3rd exception); (b) men (and officers) who have left the Army on account of disablement or ill-health (*ibid.*, 5th exception); and (c) rejected men (*ibid.*, 6th exception). The Army Council may send to any such man a notice requiring him to present himself for re-examination within not less than seven days, and on being sent such notice, any man to whom it is sent "shall, as from the date of the notice, be deemed to come within the operation of section 1 of the Military Service Act, 1916 (Session 2) . . . and the Military Service Act, 1916, shall apply accordingly." The effect of these words appears to be that any such man, on the thirtieth day after receipt of the notice—this being "the appointed day"—is deemed to be enlisted and transferred to the Reserve under section 1 of the second Act. The new Bill mentions no age-limits, but apparently the result is that a man who attains forty-one before "the appointed date" is not within the statute. The "appointed date" is defined by the first section of the second Act as meaning "as respects men who come within the operation of this section after the passing of this Act, the thirtieth day after the date on which they so come within the operation of this section." The section expressly excludes from enlistment and transfer to the Reserve any man, otherwise within it, "who has attained the age of forty-one years before the appointed date." The interpretation of this provision has already arisen in connection with the position of rejected men receiving a pink form before 1st September, 1916, under section 3 (2) of the second Act. As readers of our articles on "Military Service" will recollect, the Army Council have accepted the view that the "appointed date" in the case of such men is not 26th June, but 1st October, 1916, and the same principle clearly applies to the new Bill. We may add that, unless the Army Council otherwise directs, officers and men thus recalled to service are to receive their former rank.

Accidents During Employment.

IT IS to be hoped that *Thom* v. *Sinclair* (*ante*, p. 350; 1917, W. N. 97) marks the turning point in an artificial mode of interpreting the Workmen's Compensation Act, 1906, which has gone far to defeat its plain intent during the last three years. A fish-worker in Scotland was packing herrings in a shed belonging to her employer. A wall was being erected on a neighbour's property; it fell and seriously injured the woman. Common sense says at once, that here we have an "accident" which arises "out of" and "in the course of" the woman's employment, so as to entitle her to statutory compensation under section 1 of the Act. But a host of recent decisions have suggested a subtler view of these words. There has grown up a doctrine which substantially means this: An accident does not arise "out of" an employment unless the employed person is subjected to some special risk, while engaged at his work, of incurring such accidents—some risk which the public at large in his vicinity would not suffer equally with him. The Scottish Courts were reluctantly compelled by the supposed authority and in pursuance of this *ultra*-subtle dogma to hold that the fish-worker could not receive compensation; for her injury was due to the unstable state of a neighbouring building, and the instability of that building cannot be imputed to the circumstance that a fish business was being carried on in a shed near it. But the House of Lords has refused to push logic, or alleged logic, to an extreme which shocks common sense. The accident, they say, was caused by a peril attached to the particular locality in which the woman had necessarily to do her employer's work, and therefore it must be regarded as arising out of that work.

Criminal Appeals from India.

THE Judicial Committee of the Privy Council is not a Court of Criminal Appeal; or, rather, it does not advise his Majesty in Council to review criminal verdicts as he reviews civil verdicts. So the Board has decided many times. It has expressed once again the reasons for its decision in *Dal Singh* v. *The King-Emperor* (*ante*, p. 351). But the King in Council will in certain cases interfere to override verdicts at criminal trials given in the non-self-governing parts of the Empire, where the Crown in Council, and not the Crown in Parliament, is the final depositary of sovereignty. The Board will interfere if there has been some great and manifest departure from the settled principles of justice or the fundamental rules of criminal procedure, such that this violation of right must not be allowed to become a precedent. In other words, it is the public mischief caused by a precedent which violates natural justice and destroys public confidence in the fairness of His Majesty's courts, and not any wrong done to an individual or any mistaken interpretation of a rule of law, which is the occasion of the

interference which alone the Board will advise. A mere mistake of fact is not enough, nor even a perverse verdict, nor a mistake of law. Still less is a mere departure from the technicalities of procedure important, though it is in the interests of justice that these be preserved. There must be one thing more—namely, a "violation of natural justice." It follows that *Dal Singh* v. *The King-Emperor* had no chance of success. In this case an Indian Appeal Court, in a murder appeal, had supported the verdict of the Court below by comparing the evidences of witnesses given at the trial with their earlier statements recorded in police diaries. This practice is forbidden by section 172 of the Indian Penal Code, and wisely forbidden on grounds of policy, for confessions made to the police in India have too often been obtained by methods of torture, which throw suspicion on their value in all cases. Here, then, was a grave irregularity, a distinct breach of a statutory rule. But it is not a "violation of natural justice," merely the breach of a local statutory prohibition, and so the Judicial Committee refused to interfere.

The Priorities of Equitable Incumbrancers.

An interesting decision on the priority of equitable incumbrancers was given by Eve, J., in *Jones* v. *Cooke-Hill's Trustee* (Weekly Notes, 1917, p. 73). The question was considered recently by Neville, J., in *Coleman* v. *London County and Westminster Bank* (1916, 2 Ch. 353), on which we commented at the time (60 Solicitors' Journal, 776), and both cases illustrate the rule that, as between equitable incumbrancers, he whose charge is first in point of time prevails, unless he has by some act or omission forfeited his *primâ facie* right of priority: *Taylor* v. *London and County Banking Co.* (1901, 2 Ch. 231, 260). In *Coleman's case* the title to debentures was in question, the first equity in time being that of a *cestui que trust* under a settlement, and it was contended that he had forfeited his priority by reason of the trustee's omission to register the transfer of the debentures to himself. The result was that the settlor, who got the debentures back into her possession, was able to create a charge upon them to a bank. But the trustee's omission to register was not a matter for which the *cestui que trust* was responsible, and his prior equity prevailed. In the present case the question depended on the possession of the title deeds. The owner of real property, A, gave to B a memorandum of deposit to secure £1,000, but the deeds were not handed to B, but were left in the custody of C, who was B's solicitor. Subsequently A conveyed the property to C, and C deposited the deeds with W to secure £1,000. This deposit was without notice of the prior equitable mortgage to B. B died, and the plaintiffs were his executors. Clearly B's charge was entitled to priority over W's, unless B had by his conduct forfeited his priority. The only negligence charged against him appears to have been that he had left the deeds with his solicitor. But this could hardly be treated as negligence, and Eve, J., held that his security was not postponed. It is, of course, negligence for an equitable mortgagee, if he is entitled to the deeds, not to get them in (*Farrand* v. *Yorkshire Banking Co.*, 40 Ch. D. 182); or to part with them without sufficient reason, and so enable a further security to be created (*Waldron* v. *Sloper*, 1 Drew. 193); but in each case the conduct of the first equitable mortgagee must be considered, and he is only postponed if he does an act or omits a duty, and the subsequent mortgagee gets the deeds in consequence of such act or omission: *Union Bank of London* v. *Kent* (39 Ch. D., p. 245).

A Scottish Marriage.

Mackie v. *Mackie* (54 Sc. L. R. 250) is an interesting addition to the Scottish law of marriage. The headnote is as follows:—"Promise *subsequente copula* constitutes marriage, it is therefore competent to bring an action of declarator of such marriage after the death of one of the spouses. The only consequence of such death is that the promise can only be proved by writ." The action was brought by a young woman for a declarator that she was, on 17th September, 1914, lawfully married to one Mackie, a lance-corporal in the Royal Highlanders. The action was undefended, and the case of the pursuer was that marriage had been duly constituted between her and Mackie by promise "*subsequente copula*." Mackie and the pursuer were in the same condition of life. She had been acquainted with him for some years, and was well known to his relations. In October, 1913, they became engaged; he gave her an engagement ring, but the marriage was not to take place until after two years, when he would have saved enough to furnish a house. Having served in the Territorial Forces before the war, he was mobilized with his regiment, which was drafted to France, and he was there killed in action in June, 1915. The pursuer stated that, relying on his promise of marriage, she, in September, 1914, and in March, 1915, allowed him to cohabit with her, and that as the result a child was born in December, 1915. The question before the Court of Session was whether they ought to hold, following the opinion of Lord Fraser, in his book on "Husband and Wife," that the promise and cohabitation did not, without more, constitute marriage, but merely gave the woman a right to have the marriage solemnized, and that a decree of declarator took the place of an order for the solemnization of the marriage. In this view the Court, being unable to order a dead man to solemnize a marriage, would be equally unable to declare that he was married at a date subsequent to his death. But the Court of Session boldly disregarded the opinion of Lord Fraser, and held that there was on the facts a valid marriage in the lifetime of the deceased. We are not disposed to challenge this decision, but it must, we think, be admitted that it favours secrecy and informality to a degree which is liable to abuse. We entirely agree with the observation of the Lord Justice Clerk, that in cases of this sort, where an action is brought after the death of the husband, it will be necessary for the Court to scrutinize more particularly and more carefully, if possible, the evidence which is adduced than may be necessary in other cases.

Irremovability and Settlement.

The poor, we are told, are always with us. So is the Poor Law, with all its curious historical anomalies derived from the Tudor Law of Parochial Settlement and the Elizabethan principle of parochial rating. A recent case illustrates once more the needless trouble and expense which constantly arise owing to disputes between one union and another as to the "irremovability" or the "settlement" of a pauper. In *Daventry Union* v. *Coventry Union* (1916, W. N. 431) the pauper had originally been settled, as an infant residing with his father, in a parish of the Daventry Union. But in December, 1901, his parents and he migrated to a parish of the Barford Union, and there resided continuously till April, 1905—a period of about three and a half years. Later on they moved elsewhere, but never resided long enough to acquire a "settlement" in any other union, and in 1913 the pauper became chargeable to the Coventry Union. Now, the latter, since the pauper had no settlement within its area, is entitled to send him back to the union where he was last legally settled. Was that union Daventry or Barford? The former is liable until the person born and settled in it has acquired a settlement elsewhere. Had he acquired such a settlement in Barford Union? This depends on the interpretation of the Divided Parishes Act, 1876, s. 34, which enables a person to acquire a new settlement in a new parish by virtue of three years' continuous residence in it, such that in each year he acquired the status of "irremovability" in that parish. After one year's residence in non-pauper conditions a person acquires "irremovability," but it takes three years of such residence to acquire a settlement. Now, the pauper and his father had resided three years in the area of Barford Union, and were *primâ facie* settled there. But in the first year the residence of the father had been interrupted for one week, during which he was a hospital patient in another parish. Did this interruption of one week disqualify that year from being one of the three necessary years of "irremovable residence"? The Divisional Court said "No," and so the settlement in Barford Union was held to be valid.

Remedies Against Offenders who go out of the Jurisdiction.

We are told that there is no wrong for which the law of England has not provided a remedy, but a newspaper paragraph calls our attention to a case of grievous hardship for which no adequate remedy can be found. An Englishman, married and the father of six young children, deserts his family and makes his way to Australia, where he soon obtains remunerative employment. His place of residence is well known, but he refuses to pay any attention to applications to contribute to the support of his family, and openly declares that he will in future disregard any claim on their part. If the desertion had taken place in this country, the wife could obtain redress from the Divorce Court, or a court of summary jurisdiction; but the English Courts have no jurisdiction in Australia, and she could, at the utmost, obtain the barren remedy of a judgment which could not be enforced. The Summary Jurisdiction (Process) Act, 1881, enables process issued under the Summary Jurisdiction Acts in England to be put in force in Scotland, after it has been duly endorsed by a Scottish Court. Distances have been much lessened by improvements in the means of locomotion, and a day may come when similar legislation between England and her Colonies may be discussed. But the expense of proceedings in such remote parts of the globe would often be a heavy burthen upon persons of slender means, and the consent of the Colonies themselves would not always be readily obtained. The Act of 1881 contains an express provision that it is not to apply to Ireland. We may, however, assume that every colony, as it advances in wealth and importance, will more and more object to being made an Alsatia for fugitive offenders, and will offer its strongest resistance to such misuse.

Death Duties and Settled Legacies.

There is an obvious inconvenience in subjecting the residue of an estate to charges which cannot be ascertained and paid until a future date; but this is the effect in many cases of giving settled legacies free from duty, and the inconvenience has been intensified by section 14 of the Finance Act, 1914, which abolished settlement estate duty. The settlement estate duty cleared the estate duty on the settled legacy until it vested in an absolute owner, and at the same time cleared the residue so far as estate duty was concerned; but this prudent arrangement of the Legislature disappeared under the pressure of revenue requirements.

The result has been seen in a succession of cases in which attempts have been made to get rid of the inconvenience, and confine the words "free of duty" to duties which can be ascertained and paid at the testator's death; but the varying circumstances and language of the wills in question make it difficult to deduce from them any general principle. In *Re Snape* (59 Solicitors' Journal, 562; 1915, 2 Ch. 179), where the matter seems to have been first discussed, the testatrix died in 1913. She bequeathed £6,000 "free of all duties" in settlement. The persons interested would pay legacy duty at the same rate, so that it could be paid at once, and, as the law then stood, estate duty could also be cleared. But this was altered by the Finance Act, 1914, and in effect a new duty was imposed after the death of the testatrix. Eve, J., held that the words "free of all duties" did not apply to such a case, and he was largely influenced by the inconvenience of postponing indefinitely the distribution of the residue. But in *Re Palmer* (60 Solicitors' Journal, 565; 1916, 2 Ch. 391) the Court of Appeal held that there was no general principle forbidding the words to apply to duties imposed after the testator's death. "There is," said Lord Cozens-Hardy, M.R., "no general principle which can be relied on. A testator may use language which is sufficient to cover a duty not in force at his death. . . . His intention must be found from the language of the will." In that case there was a direction that all legacies were to be "handed over or paid free of all duties," and these words fixed the payment of the legacy as the date up to which, and not beyond, duties were to be paid out of residue.

In *Re Hatch* (60 Solicitors' Journal, 567) there were no words like those in *Re Palmer* (*supra*) to restrict the payment of duty. The testator died in 1907. He directed by his will that all legacy, succession or other duties payable in respect of benefits thereby given (except shares of residue) should be paid by his residuary estate. Sargant, J., treated *Re Snape* (*supra*) as overruled by *Re Palmer*, and he held that the direction extended to all succession, legacy and estate duties which would become payable on the deaths of the tenants for life of specifically settled funds. A like decision was given by the same Judge in *Re Stoddart* (60 Solicitors' Journal, 586; 1916, 2 Ch. 444). A testator who died in 1913 gave settled legacies, with a direction that all the legacies should be paid and enjoyed "free of all death duties." "No doubt," it was said, "great practical difficulties arise from this result, which is that some part of the residue must be kept to answer any fresh duties which may be imposed by the Legislature," but the learned Judge pointed out that this applied to legacy duty as well as estate duty.

In the above cases the question related to settled legacies, and settled shares of residue were not affected; and at first sight there appears to be an inconsistency in speaking of any particular interest in residue being given free of duty, since the duty must itself be paid out of residue (see cases cited, *ante* p. 51). But a decision in favour of such a direction was given in *Re Kennedy* (*ante*, p. 55; 1917, 1 Ch. 9). The testator, who died in June, 1914, directed that all bequests should be paid free of all death duties, and created a life interest in the residue. It was held that this was a "bequest," and that the legacy duty in respect of it was payable out of corpus and not income.

The question of duties in respect of settled legacies arose again in *Re Gunn* (1916, Weekly Notes, p. 283), and Peterson, J., from various indications in the will, arrived at the conclusion that the testator, in directing payment of duties, meant only such duties as were payable at the time when the trust fund was realized and available for distribution; the direction did not include future duty which would become payable under section 14 of the Finance Act, 1914, on the termination of the life interests in the settled funds. The case illustrates the rule that the result depends on the particular words of the will under consideration. But there were no such special considerations in *Re Tinkler* (*ante*, p. 170; 1917, 1 Ch. 242). The testator had died in 1872, long before estate duty was thought of. He left a settled legacy of £10,000, and directed that all duties payable in respect of it were to be paid out of his residuary estate. The tenant for life was still living, and the question was whether the residue, which had recently become distributable, could be distributed without providing for the estate duty which, under the Finance Act, 1914, would become payable on her death. In the absence of any words to cut down the effect of the direction in the will, Younger, J., held that it extended to all duties, and hence the future duties must be provided for out of residue. Under the circumstances the residue was ordered to be paid over, subject to an undertaking to pay estate duty when it should become payable.

Two more cases must be added to the list—*Re D'Oyley* (*ante*, p. 336; Weekly Notes, 1917, p. 73); and *Re Eve* (Weekly Notes, 1917, p. 101). In *Re D'Oyley* a testatrix made her will in 1911, and died in December, 1914—that is, after the Finance Act, 1914, came into operation. She gave a settled legacy of £7,000, "free of duty." The question was whether the estate duty which would become payable on the death of the tenant for life was payable out of residue or out of the settled legacy. In principle it is by no means clear that this case differs from the previous ones in which the future duty has been thrown on the residue. But Neville, J., held that the direction did not extend to future duties, and that it applied only to duty which was presently ascertain-

able. At present the case is only shortly reported, and the learned Judge distinguished *Re Stoddart* (*supra*). But the exact reason for the distinction must await a fuller report. Possibly the distinction depended on the testatrix surviving the commencement of the Finance Act, 1914, though it is not clear how this could have any such effect. Indeed, the fact that the new duty was in existence at her death would seem to be a reason for including it in her will. Unless there were some special words in the will, the decision seems like a "throw-back" to *Re Snape* (*supra*), and to be based on considerations of convenience.

Lastly, there is *Re Eve* (*supra*), in which also the will was before, and the death of the testatrix after, the Finance Act, 1914. She gave a settled legacy of £8,000, and directed that all legacies should be free of duty. The legacy duty on the successive interests in the £8,000 was payable at the same rate, and was paid at once. The tenant for life died in 1916, and the question was whether the estate duty then payable fell on residue or not. ASTBURY, J., who had before him a transcript of the judgment in *Re D'Oyley* (*supra*), held that that did not apply, and that the duty was payable out of residue. Of the previous cases *Re Hatch* (*supra*) seems to be most in point. The practical effect seems to be that a direction to pay a settled legacy free of duty will throw all future duties arising during the settlement on the residue, and it requires some special indications in the will to produce a contrary result, notwithstanding that the duties are imposed after the testator's will or after his death.

The Military Service Acts.

IX.—THE PROCEDURE OF MILITARY TRIBUNALS.

WE do not propose to discuss at length the procedure laid down by the Military Service Regulations (Amendment) Order, 1916 (Statutory Rules and Orders, 1916, No. 342 [R. 85]). Every practitioner before Tribunals, of course, will obtain a copy of these Regulations. A brief summary, with reference to a few cases decided, either in the Courts or by the Central Tribunal, will be sufficient. We will deal with (A) Local Tribunals, (B) Appeal and Central Tribunals, and (C) Judicial Control of Tribunals.

A.—LOCAL TRIBUNALS.

The following points require particular attention:—

(1) *Prescribed Form of Notices:*—Generally speaking, all applications and other proceedings before Tribunals must be made on the forms prescribed by the Local Government Board, which can be obtained from the Clerk to the Tribunal (Regulation 7). This requirement, however, is directory, not imperative; so that where the prescribed form cannot be obtained in time to comply with any rule, any notice which is in substance satisfactory will be sufficient: *R.* v. *Lincolnshire Appeal Tribunal, Ex parte Stubbins* (80 J. P. 465).

(2) *Publicity of Proceedings:*—The Regulations contemplate that cases shall be conducted in public, but power is reserved to the Tribunal to conduct in private, if they so decide, the whole or any part of the proceedings (Regulation 4). The Local Government Board Instructions (R. 36, par. 9) suggest that where a party or other person concerned in a case requests, for good reasons, that the proceedings should be conducted in private, his request should be granted. Business or domestic disclosures are suggested in the Local Government Board Memorandum as an example of a "good reason." The Tribunal may confer in private respecting the decision of any case.

(3) *Presence of Military Representative during private deliberation of Tribunal:*—The Military Representative ought not to be present when such a private deliberation takes place, and the Court has so intimated; although in the special circumstances of the case it refused to quash a decision made where the Military Representative had, in fact, been present at a private deliberation on a claim: *R.* v. *Glamorganshire Appeal Tribunal* (1917, W. N. 26). No claim to be present *as of right* was made for the Military Representative, and the Court said that, had such a claim been made, the Court would have interfered. The Attorney-General said that instructions had been given to Military Representatives to respect in future the rule laid down by the Court.

(4) *Evidence:*—It is for the Local Tribunal to determine what evidence shall be taken to elucidate the facts of each case (Memorandum, R. 36, par. 8). The applicant has a right to be heard. If he neither appears in person, nor sends a representative, he has the option of making written representations. The parties may be represented by a lawyer, whether solicitor or counsel (*ibid.*).

(5) *Locus Standi to make application:*—On this point neither the Statutes nor the Regulations are clear. The Local Government Board Memorandum (R. 36, par. 18), suggest that—

(a) the man to be exempted may apply (apparently on any of the six grounds);

(b) if he is unable to be present, from ill-health or other cause, someone else may apply as his representative on his behalf;

(c) an employer may apply for a workman whom it is in the national interest to retain in any employment. Apparently either an actual or a prospective employer can do this.

(d) The head of an institution (college, school, &c.) may make an application for any person in his care.

We are of opinion that any person dependent on a man liable to service has a statutory right to apply that he be exempted on the ground of domestic hardship; but there is no Regulation or decision governing the point, except a Central Tribunal decision (case 68), that an employer can apply on the ground of hardship to the man.

(6) *Tribunal to hear Case:*—(a) The short rule is that applications on grounds of employment must be made to the Tribunal of the area in which the business is situated; those on personal grounds to that of the locality in which the man resides (Regulations 10 *et seq.*); a second application on *any ground* should be made to the first Tribunal.

(b) Where an employer applies for a man to the Local Tribunal of his business locality, a subsequent application to another Local Tribunal by the man himself on a personal ground should be made to the former Tribunal, whether or not the man resides there (Regulation 12; Central Tribunal Decisions, case 73).

(c) In exceptional cases, where a second application concerns particulars of an occupation, &c., with which the first Tribunal is unfamiliar, an application for special directions as to the proper forum should be made to the Local Government Board (case 73).

(7) *Grounds of Application:*—The notice of claim should set forth the grounds correctly, as well as the reasons for the claim. But where the reasons disclose a valid ground not specified on the notice—*e.g.*, reasons disclose a certified occupation or indispensability, whereas ground alleged is personal hardship—the Local Tribunal should not reject the claim as improperly framed, but amend the form and consider it (case 71).

(8) *Certified Occupations:*—The Regulations relating to Certified Occupations are somewhat peculiar, and are of such unusual importance that we print in full the clauses which make a departure from the normal procedure laid down for other cases. They are contained in Section V. of the Military Service Regulations Order [R. 85]. It should be noted that, although Regulation 5 provides for the issue of a certificate of exemption to an applicant claiming to be in a certified occupation, *unless the Military Representative gives written notice of objection*, nevertheless, the Courts have held that the Tribunal, in the absence of such objection, has itself inherent jurisdiction to refuse the certificate if not satisfied on the evidence that the certified occupation is the usual or principal occupation of the

applicant (*R.* v. *Grimsby Tribunal, Ex parte Daley*, 1917, W. N. 66; and *R.* v. *Hampshire Appeal Tribunal, Ex parte Handley*, 1917, W. N. 67):—

4. Upon receiving an application under this Section duly made in accordance with these Regulations, the Local Tribunal shall forthwith forward the duplicate form of application to the military representative.

5. If five clear days after the day on which the duplicate form of application has been sent to the military representative, *or within such extended time as may be allowed by the Tribunal*, no notice of objection has been received by the Local Tribunal from the military representative, the Tribunal *shall*, if they are satisfied by a statement in writing as to the man's principal or usual occupation, signed, if the man is an employed person, by his employer or, if the man is not an employed person, by the man himself, or by other evidence satisfactory to the Tribunal, that the man's principal and usual occupation is one of the certified occupations, grant a certificate without hearing the parties to an application under this Section.

6. *Within* five clear days after the day on which the duplicate form of application has been sent by the Local Tribunal to the military representative, *or within such extended time as may be allowed by the Tribunal*, the military representative may *deliver* notice in writing to the Tribunal that upon the application under this Section for a certificate of exemption he will contend that—

(*a*) The man's principal and usual occupation is not in fact one of the certified occupations, or that

(*b*) Notwithstanding that the man's principal and usual occupation is one of the certified occupations, it is no longer necessary in the national interests that he should continue in civil employment.

7. Where such notice is given by the military representative, the Local Tribunal shall give notice in writing to the applicant of the question to be raised on his application and shall fix a date for the hearing of the application and the question so raised.

If question (a) only is raised, the Tribunal shall grant a certificate of exemption if they are satisfied that the principal and usual occupation of the man in respect of whom it is raised is one of the certified occupations.

If question (b) is raised, whether alone or in conjunction with question (a), the Tribunal shall grant or refuse a certificate of exemption *in accordance with the merits of the case.*

8. A certificate of exemption may be absolute, conditional, or temporary, as the Local Tribunal think best suited to the case.

A certificate of exemption may be granted subject to the condition that it shall not be renewable or open to variation except on an application made with the leave of the Tribunal. The decision of the Tribunal granting or refusing leave under this provision shall be final.

Where a conditional certificate is granted, the conditions upon which it is granted shall be stated on the certificate.

No certificate of exemption *granted in pursuance of an application made under this Section* shall be conditional upon a person to whom it is granted continuing in or entering into employment under any specified employer or in any specified place or establishment.

Alterations are printed in italics.

(9) *Form of Application:*—Applications must be in duplicate on Forms 41 or 42 [Prescribed Forms], and on a separate form each, except in the case of a list of employees applied for by a firm, &c.

(10) *Extension of Time:*—The Tribunal can extend the time for an overdue application if they think it reasonable, on the ground of either absence of the man abroad or any other sufficient cause. The Tribunal cannot extend the time for claiming a renewal (case 70).

(11) *Decision of the Tribunal:*—The decision of the Tribunal must be forthwith communicated in writing by the Tribunal to the applicant and to the Military Representative (Regulation 17). A certificate must then be issued to the applicant if exemption is granted; but it shall not be issued until expiry of the period within which the Military Representative can appeal (*ibid.*). The Divisional Court has held that a verbal decision of the Tribunal, not yet reduced into writing, can be recalled within the time limited for appeal, and replaced by a written decision in a contrary sense: *R.* v. *Central Tribunal, Ex parte Sydall* (*Times*, 3rd February).

(12) *Refusal to Rehear:*—Where a Local Tribunal refuses to rehear a case on application so to do, it exercises an absolute right of discretion in so doing, and its refusal to rehear is not appealable: *R.* v. *Hertfordshire Appeal Tribunal, Ex parte Hills* (1916, W. N. 417).

(*To be continued.*)

Reviews.

Stamp Duties.

THE LAW OF STAMP DUTIES ON DEEDS AND OTHER INSTRUMENTS. By E. N. ALPE, of the Solicitor's Department, Inland Revenue, Barrister-at-Law. REVISED AND ENLARGED by ARTHUR REGINALD RUDALL, Barrister-at-Law. WITH NOTES ON PRACTICE, by HERBERT WILLIAM JORDAN. FOURTEENTH EDITION. Jordan & Sons (Limited).

Alpe's Stamp Duties is well known as an indispensable handbook for the practitioner; and we are glad to see a new edition. The increase of the old stamp duties and the introduction of new ones which have taken place of recent years—in particular under the Finance Act, 1910—has made it essential in all transactions to bear in mind the expense in which the client may be involved. In no department has this been felt more than in the preparation of voluntary settlements and deeds of family arrangements, and one of the most difficult tasks is to secure that a deed which in effect is a family arrangement, and is not fairly within the scope of the Voluntary Settlement Duty, shall escape payment of an *ad valorem* £1 duty. In practice we believe the officials at Somerset House take a reasonable view of such cases, but, none the less, the conveyancer has to be on his guard. The feature of "Alpe" is the clear style in which the duties are presented and the practical notes which explain them and facilitate the lawyer's task. The note, for instance, on the duties payable on "conveyance on sale" on the formation of a company may be said to have become classic; and a note of almost equal value is that which explains the duties payable under a marriage settlement. The present edition maintains the well-known character of the work.

Books of the Week.

Parliament.—Parliamentary Practice: A Treatise on the Law, Privileges, Proceedings, and Usage of Parliament. By Sir THOMAS ERSKINE MAY, K.C.B., D.C.L., Clerk of the House of Commons and Bencher of the Middle Temple. 12th Edition. Edited by T LONSDALE WEBSTER, C.B., Second Class Assistant in the House of Commons. Butterworth & Co. 52s. 6d.

Parliament.—Dod's Parliamentary Companion for 1917 85th Year (93rd Issue). Whitta ker & Co. 5s. net.

Insurance.—The Insurance Blue Book and Guide for 1917 Percival Marshall & Co. 3s.

Correspondence.

War Savings.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I have been asked by the Lord Mayor to assist him and his Committee for War Savings in the Metropolis to obtain help from members of the Law Society towards indicating the need for war savings. This object, I feel, can be attained through the medium of your valuable columns.

I inclose a letter which I have received from the Lord Mayor on the subject, and only need add that I should feel personally greatly obliged to any member of the Law Society who will communicate with the Hon. Secretary of the Metropolitan Committee for War Savings at the Mansion House, and place his services at the disposal of that committee for the purposes indicated in the Lord Mayor's letter.—I am, Sir, yours faithfully,

THOMAS EGGAR, President.

Law Society's Hall, Chancery-lane, London, W.C. March 26.

The following is the letter referred to:—

LORD MAYOR'S COMMITTEE.
The Mansion House, London, E.C.,
22nd March, 1917.

Thos. Eggar, Esq., President,
Law Society's Hall, Chancery-lane, W.C. 2.

My dear Sir,—I recall that in your letter of the 26th February you hoped I would not fail to call upon your society whenever I considered their services might be usefully employed for the national well-being.

I have now received a request from the Chancellor of the Exchequer that the Metropolitan Committee which was formed for the purposes of the War Loan should be continued in order to stimulate the War Savings movement. At my invitation the civic representatives in the Greater London area met recently at the Mansion House to consider the Chancellor's request, and it was unanimously decided to continue the Committee for this purpose. An Executive Committee has been appointed to prepare and carry out a scheme which will be put into operation at the earliest possible moment.

One of the directions in which I am of opinion this Committee can most effectively operate is in the setting up of a panel of speakers who are competent to give short addresses on the need for War Savings, and who will be able to spare a few hours every now and then in different parts of our area. This would not necessarily entail a fixed number of hours of work on given days, but it would be of the utmost assistance to be able to supply speakers at a few days' notice for the campaigns which it is proposed to carry out.

Many members of your society rendered very valuable service in connection with the War Loan Campaign, and this fact, coupled with the kind suggestion in your letter of the 26th February, emboldens me once more to ask if you would bring this appeal to their notice, with a request that as many as are living or working in the Greater London area, who feel that they could occasionally spare even a little time to help us, would communicate with the Honorary Secretary (Mr. A. F. May) at this address stating as near as they can what assistance they think they could render.

It is suggested that when the panel is formed, the voluntary helpers will be called together in order to give an explanation of the methods which it is desired may be uniformly followed by all speakers.

I am confident that you and the members of your society fully appreciate the great urgency and importance attaching to rapid growth of the War Savings movement, which will tend to relieve the financial and economic strain of the war.

Believe me, yours very truly,
W. H. DUNN, Lord Mayor.

CASES OF THE WEEK.

Court of Appeal.

REX *v.* HOME SECRETARY. *Ex parte* THE DUKE OF CHATEAU THIERRY. No. 2. 28th February; 16th March.

ALIEN—DEPORTATION—SUBJECT OF ALLIED STATE—SELECTION OF DESTINATION—ALIENS RESTRICTION ACT, 1914 (4 & 5 GEO. 5, C. 12), S. 1, SUB-SECTION (1)—ALIENS RESTRICTION CONSOLIDATED REGULATIONS, REG. 12.

By section 1 (1) *of the Aliens Restriction Act*, 1914, "*His Majesty may . . . impose restrictions on aliens, and provision may be made by* [*Order in Council*] . . . (*c*) *for the deportation of aliens from the United Kingdom.*" *A deportation order dated* 23*rd November*, 1916, *signed by the Home Secretary, was made against a Frenchman of military age who had been resident in England since* 1907. *The order did not specify any particular country to which the alien was to be deported, but there was evidence that it was proposed to deport him to France, where, for certain reasons, he did not wish to go.*

Held, that under section 1 (1) *of the Aliens Restriction Act*, 1914, *the Home Secretary had power to make an order for the deportation of any alien, whether a political refugee or not, though he had no power to name in the order the particular country to which the alien should be deported. By regulation* 12 *of the Aliens Restriction (Consolidation) Orders*, 1916, *there was power given the Home Secretary immediately upon the making of a deportation order to cause the alien to be put on board a ship and detained there "in legal custody" until the ship left the United Kingdom, when his right to detain the alien longer ceased. The effect of taking such a step by the Home Secretary might well be to deport the alien to whatever country the Home Secretary desired that he should go. There was no ground upon which the deportation order in question could be reviewed, as it was one admittedly within the power of the Home Secretary to make, and was perfectly regular in form. It followed that the rule for a* certiorari *obtained by the alien would be discharged.*

Decision of the Divisional Court (*reported* 33 *T. L. R.* 151) *reversed.*

Appeal by the Home Secretary from a judgment of the Divisional Court making absolute a rule *nisi* which had been obtained by a Frenchman of military age, who alleged that he was a political refugee, and ought not to be deported to France, and claimed that the deportation order should be quashed as bad in that it purported to select the country to which an alien was to be deported. At the close of the arguments judgment was reserved.

SWINFEN EADY, L.J., in the course of his judgment, said the deportation order was dated 3rd November, 1916, and thereby, in pursuance of the powers conferred by the Aliens Restriction Act, 1914, and regulation 12 of the Aliens Restriction (Consolidation) Order, 1916, the Home Secretary ordered that Leon Joseph Amand Derais, *alias* Leon Amand Joseph Derais Bouillon, *alias* Duc de Chateau-Thierry, should be deported from the United Kingdom. The alien in question, the respondent to this appeal, was born at Havre in 1875. About February, 1905, he left France and proceeded to Belgium, and early in 1907 came to England, where he has ever since resided. That he was an alien was not disputed. The respondent said that if he was sent back to France he would be arrested as having favoured the Royalist party. As to that the Court was assured on the highest authority that no action on that ground would be taken against him. Then he said that he was medically unfit. But there was evidence before the Court on which the Court could not so hold, and at any rate he would be examined by a French Board before he was ordered to join the colours. The really important point was whether the Divisional Court had power to go behind the order as drawn up, to ascertain if the deportee would be sent in fact to France, the order being merely that he should be deported. In his lordship's opinion the Divisional Court had no such power. The order was perfectly regular in form; no exception was taken to the proceedings, and therefore there was nothing on which the rule could be made absolute, the effect of which was to quash an order regular in form and properly made by competent authority. No doubt the language of the Aliens Act, 1905, was in marked contrast with the language of the Aliens Restriction Act, 1914, and it was urged by the respondent that the Executive Government claimed and intended to exercise over him by virtue of the later Act and the Regulations an authority not thereby conferred. The Divisional Court thought if the object and intention of the Executive in making the order was to deport the alien to a particular foreign country, they must treat this matter as if the order did in effect state that the alien was to be deported to France. So regarding it, they made the rule absolute. He did not follow that reasoning, and he thought the appeal should be allowed. That was really sufficient to dispose of this case, but on the question whether the Home Secretary had power to require the deportee to go to a particular place his lordship said: Where a Secretary of State makes a deportation order, he may (if in his judgment it is a proper case so to do) leave the alien at large, and free to leave the kingdom upon complying with the other provisions of the order. If the alien fails to do so, he incurs the penalties provided by section 1 (2) of the Act. On the other hand, a Secretary of State may (if in his judgment it is proper so to do) immediately upon making a deportation order, cause the alien to be detained and placed on board a ship, and detained on board that ship until the ship finally leaves the United Kingdom, when his right to detain the alien longer ceases. It was essential to give due effect to this provision that the Secretary of State should select and determine the ship, for by thus selecting the ship the destination of the alien should be effectually controlled. The conclusion at which I arrive is that although the executive Government has no power to order a deported alien to go to any particular place, yet by the authority given to it to detain the alien and place him on board a ship, which I construe as meaning a ship which the Government select, and detain him there until the ship finally leaves the United Kingdom, the result will be that the alien will be deported to the country to which that ship shall directly sail. After the ship finally leaves the United Kingdom the Government cannot any longer detain him, but in most cases there would be practical difficulty in the alien's leaving the ship before she makes the port for which she is bound. The appeal will be allowed and the order of the Divisional Court reversed, and the rule for a *certiorari* should be discharged.

PICKFORD and BANKES, L.JJ., read judgments to the same effect. A stay pending appeal to the House of Lords was refused.—COUNSEL, for the appellant, *Sir F. Smith*, A.-G., *Roche*, K.C., and *Branson*; for the respondent, *Rawlinson*, K.C., and *Barrington-Ward*. SOLICITORS, *Treasury Solicitor*; *H. Percy Hecher*.

[Reported by ERSKINE REID, Barrister-at-Law.]

REX *v.* COMMANDING OFFICER OF THE 30th BATTALION, MIDDLESEX REGIMENT. *Ex parte* FREYBERGER. No. 2. 20th March.

ALIEN—BRITISH SUBJECT OF ALIEN PARENTAGE—ATTAINMENT OF MAJORITY—ABSENTEE FROM MILITARY SERVICE—DECLARATION OF ALIENAGE IN TIME OF WAR—RESERVED FORCES ACT, 1882 (45 & 46 VICT. C. 48), S. 15—BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914 (4 & 5 GEO. 5, C. 17), S. 14—MILITARY SERVICE ACT, 1916 (5 & 6 GEO. 5, C. 104), S. 1.

Section 14 (1) *of the British Nationality and Status of Aliens Act*, 1914, *enacts that any person who having been born within His Majesty's Dominions and allegiance or on board a British ship, is a natural-born British subject, but who, at his birth or during his minority, became, under the law of any foreign State, a subject of that State, and is still such a subject, may, if of full age and not under disability, make a declaration of alienage, and on making the declaration shall cease to be a British subject.*

One F. was born in London in January, 1896, *of Austrian parents. In* 1916 *he was ordered to join the colours, and eventually was sentenced by court-martial for refusing to obey military orders. On coming of age in January*, 1917, *he made a declaration of alienage under the above section of the Act of* 1914. *Registration of the declaration was refused. He therefore applied for a rule* nisi *for* habeas corpus, *but the Divisional Court discharged the rule.*

Held, that the rule had rightly been discharged, as a British subject could not become a naturalized subject of an enemy State during war-time, and therefore F. was not entitled to make the declaration under section 14 (1).

Appeal from an order of the Divisional Court, dated 12th March. In January, 1896, the appellant was born in London of Austrian parents. In 1897 his father obtained a certificate of British naturalization. In 1916 the appellant received notice to join the colours, and after several unsuccessful applications for exemption was, on 24th August, charged as an absentee. On 7th September he was sentenced

by a court-martial for refusing to obey military orders. Shortly after coming of age he, on 12th February last, made a declaration of alienage under section 14 (1) of the British Nationality and Status of Aliens Act, 1914. Registration of the declaration was refused, and thereupon he applied and obtained a rule *nisi* for *habeas corpus*. The Divisional Court discharged the rule, being of opinion that a British subject could not become a naturalized subject of an enemy State during war-time, and that the applicant was not entitled to make the declaration under section 14 (1). From that decision this appeal was brought. Counsel for the respondent were not heard.

SWINFEN EADY, L.J., said that the appellant had not proved that he has ceased to be a British subject. Even assuming in his favour that he had satisfied the Court that he was an Austrian subject, and that his declaration was in order, then the question arose: Was he a person who could validly make a declaration of allegiance to a foreign State during a war between this country and that State? It was said that section 14 of the British Nationality and Status of Aliens Act, 1914, enabled him to do so. The same argument arose in *Rex* v. *Lynch* (1903, 1 K. B. 444) under the Nationalization Act, 1870. Lynch was a British subject, and was in a foreign State, and was under no disability. The Court there held that he could not become nationalized during the war in an enemy State. The same principle applied here. The appellant could not divest himself of his allegiance to the British Crown during the war. The appeal failed on that ground. There was also another ground upon which the appeal could be dismissed. Freyherger was a male British subject within the meaning of the Military Service Act, 1916, and he was therefore deemed to have been enlisted for the period of the war. He saw no reason for saying that the appellant was entitled to his discharge.

BANKES, L.J., and BRAY, J., gave judgment to the same effect. Appeal dismissed.—COUNSEL, *Ralph Bankes*, K.C., and *Conway*, for the appellant; *Sir Gordon Hewart*, S.-G., and *Branson*, for the respondent. SOLICITORS, *Oppenheimer, Blandford & Co.*; *The Treasury Solicitor*.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

Re **HICKEY. BEDDOE3 v. HODGSON.** Neville, J. 26th February.

WILL — CONSTRUCTION — GIFT TO THE DESCENDANTS OF A OR THEIR DESCENDANTS LIVING AT TESTATOR'S DEATH — "DESCENDANTS"—MEANING OF.

Where a gift was to the descendants of A or their descendants living at the testator's death,

Held, that the gift, being an alternative gift, a reasonable interpretation was to read the word "descendants" in the first part of the gift as meaning descendants of a single generation, and the words "or their descendants" as involving a stirpital gift; and accordingly where A had had six children, and five were living at the death of the testator and one was dead, leaving seven children and seven grandchildren, the gift was divisible into sixths, of which five-sixths were given to A's children and the remaining sixth was divided equally among the seven children of A's deceased child.

This was a summons to determine who were entitled to a certain legacy. The testator gave the legacy "to the descendants of my aunt Anna Stokes or their descendants living at my death." Anna was dead at the date of the will, having had six children; one of the children was dead at the date of the will, leaving seven children and seven grandchildren, all alive at the testator's death.

NEVILLE, J., after stating the facts, said: The words "living at my death" govern the whole clause, and if any meaning is to be given to the words "or their descendants" the meaning of "descendants" in the earlier part of the clause must necessarily be limited. It is an alternative gift, and therefore "descendants" in the latter part of the clause cannot mean the same class of persons as "descendants" in the first part, and a reasonable interpretation can be put on the gift by reading descendants in the first part as descendants of a single generation, and the words "or other descendants" as involving a stirpital gift. There is accordingly a direct gift to the children of Anna Stokes living at the date of the will, and also to the children of the deceased child of Anna Stokes, who take by substitution the share of their deceased parent, the result being that the legacy is divisible into sixths, of which five-sixths go to the children of Anna Stokes, who survived the testator, equally among them as tenants in common, and the remaining sixth goes to the seven children of the deceased child of Anna Stokes as joint tenants.—COUNSEL, *MacSwinney; Ward Coldridge*, K.C., and *Church; Dighton Pollock; P. F. Wheeler; Hodge; D. Donaldson; Robertson*. SOLICITORS, *Cecil Twist; Bower, Cotton, & Bower; Vizard, Oldham, & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

LEE v. RAYSON. Eve, J. 27th February.

VENDOR AND PURCHASER—CONTRACT FOR SALE OF GROUND RENTS—CONSTRUCTION—MISDESCRIPTION OF PROPERTY—CONDITION EXCLUDING COMPENSATION OR ANNULMENT—RESCISSION.

The plaintiff purchased certain ground rents, subject to the usual condition that there should be no compensation or annulment in respect of any error in the description of the premises. The rents were misdescribed, but were substantially of the same value as those to which a title was deduced.

Held, that the purchaser could not get what he contracted to buy, and was therefore entitled to rescission of the contract.

By clause 1 of an agreement in writing, dated 24th July, 1916, the defendant agreed to sell and the plaintiff agreed to buy the premises therein described, being certain freehold ground rents, for £1,400, the title to which was to commence with the counterparts of the leases by which the ground rents were reserved. By clause 4 of the agreement it was provided that "if there be any misstatement or error in the description of the premises, no compensation shall be allowed nor shall the same annul the sale." The particulars of the property were described as Nos. 1 to 25 (odd numbers), Tunis-road, Shepherd's Bush, Nos. 1 and 3 leased for ninety-nine years from 24th June, 1881, at £11 10s. per annum, Nos. 5 and 7, 9 and 11, 13 and 15, 17 and 19, leased for a similar term at £11 per annum, and Nos. 21, 23 and 25, leased for a similar term at £16 10s. per annum. The sum of £140 was paid as a deposit. From the abstract of title it appeared that there were in fact twelve ground rents of £5 10s. and one of £6, and that there were no such rents as were mentioned in the particulars, but in each lease a separate rent was reserved for each house. The plaintiff alleged that the property to which the title was deduced was not the property which he agreed to buy, but something essentially different, and he claimed rescission of the contract and repayment of the deposit. The defendant contended that there was no material misstatement, as the plaintiff substantially obtained the property he had agreed to buy and of the same value; but that, if there were any error or misstatement in the description, clause 4 of the contract applied, and the contract could not be annulled, and he counter-claimed for specific performance. It appeared that the plaintiff did not ask to inspect the leases or make any inquiry as to their contents. There was also evidence that the percentage charged for collection was the same whether it was for one large ground rent or a number of small ones, and that the market value was substantially the same and independent of the number of the ground rents. The plaintiff contended that the misdescription was most material, and referred, in addition to the cases mentioned in the judgment, to *Cox* v. *Coventon* (31 Beav. 378) and *Re Boulton and Cullingford's Contract* (37 SOLICITORS' JOURNAL, 25).

EVE, J.—I think that the true construction to be put upon the agreement is that the first pair of houses were let at one entire rent of £11 10s. and the following pairs at £11, and the last three at £16 10s., and there is nothing in the contract to rebut that *prima facie* construction. There were in fact no such rents as were mentioned in the agreement, and in the case of each lease there was a separate rent reserved for each house. There is, therefore, an error of misstatement in the description of the property in respect of each lease in the contract. The next question is whether this error or misstatement in the description is one to which clause 4 of the contract applies. Counsel for the plaintiff, relying on the case of *Re Beyfus and Master's Contract* (39 Ch. D. 110), contends that it does not, while counsel for the defendant, relying on the terms of this particular contract, says that it does. On this part of the case I am of opinion that the defendant is right. The words "the premises" in clause 4 have the same meaning as in clause 1, and mean the subject-matter of the contract. Clause 4 therefore applies, and the misstatement will not annul the sale unless the misdescription is "in a material and substantial point so far affecting the subject-matter of the contract that it may reasonably be supposed that, but for such misdescription, the purchaser might never have entered into the contract at all, and in such case the contract is avoided altogether, and the purchaser is not bound to resort to the clause for compensation." That was the decision of Tindal, C.J., in *Flight* v. *Booth* (1 Bing. N. C. 370), and the words were quoted with approval by Buckley, J., in *Jacobs* v. *Revell* (1900, 2 Ch. 858, 864). The difficulty is whether this error or misstatement is of the character indicated in that passage. I think that the element of value is not the dominant consideration, and is not conclusive. The dominant consideration was laid down by Lord Eldon in *Knatchbull* v. *Grueber* (3 Mer. 124), where he said: "This Court is from time to time approaching nearer to the doctrine that a purchaser shall have that which he contracted for, or not be compelled to take that which he did not mean to have." In the present case the purchaser cannot get what he contracted to buy, but something substantially different. I think, therefore, the plaintiff is in the right, and is entitled to rescission of the contract and a return of the deposit with interest, and the counter-claim will be dismissed with costs.—COUNSEL, *Clayton*, K.C., and *Roby; Maugham*, K.C., and *Topham*. SOLICITORS, *Biddle, Thorne, Welsford, & Gait*, for *Allen, Whitfield, & Hodgson*, Manchester; *Wakeford, May, Woulfe, & Gwyther*.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

FISHER v. THOMAS RAWSON & CO. (LIM.). Eve, J. 14th March.

OUTPUT OF BEER—SUPPLY OF BEER TO FREE HOUSE—PARTICULARS AND CERTIFICATE OF SUPPLY—TIED HOUSE BECOMING A FREE HOUSE—STANDARD YEAR—OUTPUT OF BEER (RESTRICTION) ACT, 1916 (6 & 7 GEO. 5), s. 5.

Under section 5 (1) *of the Output of Beer (Restriction) Act*, 1916, *the occupier of a free licensed house is entitled to obtain particulars and*

a certificate as to beer supplied for the whole of the standard year, notwithstanding that his house has been tied for three-quarters of the year.

This was an action for a declaration. The plaintiff was a publican and the defendants were brewers, from whom the plaintiff during the last nine months of 1915 was bound by covenant to obtain beer for sale at his hotel. On 1st January, 1916, the hotel became a free licensed house, but the plaintiff continued to trade with the defendants until November last, when, being desirous of obtaining his beer from other brewers, he gave written notice to the defendants requiring them to furnish the particulars and certificate mentioned in sub-section 1, of section 5, of the Output of Beer (Restriction) Act, 1916, which provided as follows: "Any licence-holder in so far as he is not bound by any covenant, agreement or undertaking, to obtain a supply of beer from any particular brewer, and who has at any time during the year ended 31st March, 1916, been supplied with beer by any brewer or brewers, shall be entitled, on giving not less than fourteen days' notice, in writing, to obtain from such brewer or brewers particulars of the number of bulk barrels of each description of beer supplied, and also a certificate or certificates stating the total number of standard barrels represented by the beer supplied during each quarter of the year ended 31st March, 1916, or such shorter period as the supply has continued." The defendants supplied the particulars and certificate in respect of the three months between 31st December, 1915, and 31st March, 1916, that being the portion of the year in which the plaintiff's hotel was a free house, but they refused to give particulars and a certificate in respect of the nine months during which the house was tied to their brewery. In these circumstances the plaintiff brought this action, claiming a declaration that he was entitled to particulars and a certificate for the whole year and for a mandatory injunction to enforce such declaration.

Eve, J.—The question at issue turns on the proper construction of the sub-section. Do the words in the first line, "In so far as he is not bound by any covenant, agreement or undertaking, to obtain a supply of beer from any particular brewer" operate to debar the licence-holder from any right under the section in respect of any part of the year ended 31st March, 1916, during which he was bound by any such covenant, agreement or undertaking, which is the contention put forward by the defendants, or were they, as the plaintiff argues, inserted for the sole purpose of preserving any tie existing when the licence-holder contemplates giving the notice and of excluding from the transfer towards which the notice is the first step, any supply then subject to such covenant, agreement or undertaking. According to the defendants' construction, the section is limited to licence-holders whose houses were free for the whole of the standard year from 1st April, 1915, to 31st March, 1916, or for a part thereof, and in the latter alternative it is effective only for that part of the standard year in which the house was a free house. The whole object of the particulars and certificate is to bring about a transfer of the barrelage represented thereby from one brewer to another. When the transfer has been completed there is nothing in the Act which compels the transferee brewer to supply the licence-holder who has obtained the particulars and certificate with the beer certified, or, indeed, with any beer at all, nor are there any provisions for a further transfer of the barrelage if the licence-holder is desirous of making a second or subsequent transfer. I think there is some justification for the criticisms to which the Act was subjected in the course of the argument, and I cannot pretend that I do not entertain considerable doubt what the sub-section really does mean; but, giving the matter the best consideration I can, I think the Legislature intended to permit the trade of a licence-holder, except so far as it is restricted to a particular source of supply at the time when he desires to transfer it to another brewer, to be so transferred, and that the plaintiff's contention is right that as the occupier of a free licensed house in November, 1916, he was entitled to obtain the particulars and certificate for the whole of the standard year, notwithstanding that his house had been tied to the defendants for three-quarters of that year. The words of exception or limitation, which it is to be noted are in the present tense, refer to the time when the licence-holder proposes to act on the sub-section, not to the condition of the house during the standard year. Mr. Maugham, on this hypothesis, argued that the plaintiff had not shewn that his house was in fact free in November, 1916, and suggested, as I think is very likely the case, that, before committing himself to the transfer to the new brewers, the plaintiff and the new brewers must have come to some agreement for the supply of beer to the plaintiff's house. Such an agreement, he argued, excludes him in terms from the section, even if the contention be accepted that the moment of time to be considered for applying the test is the date of the application for the particulars and certificate. I do not think so. The words I am construing do not, in my opinion, disqualify the licence-holder from requiring the transfer; they limit the class of trade which may be made the subject of the notice requiring the particulars and certificate. So far as his trade is free he can obtain the particulars and transfer his barrelage to another brewer; so far as he is tied he has no such right, and I think this must mean so far as he is tied to brewers, from whom, were there no tie, he would be entitled under the sub-section to obtain the particulars and certificate. I think, therefore, the plaintiff succeeds in the action, and is entitled to the declaration which he claims. It will probably suffice if I make the declaration and reserve to the plaintiff liberty to apply. The defendants must pay the costs.—Counsel, *J. H. Stamp; Maugham*, K.C., and *G. C. Whiteley*. Solicitors, *Laytons, for Fisher, Jesson, & Co.*, Ashby-de-la-Zouch; *Godden, Holmes, & Ward, for Chambers & Son*, Sheffield.

[Reported by S. E. Williams, Barrister-at-Law.]

EWING (TRADING AS THE BUTTERCUP DAIRY CO.) *v.* BUTTERCUP MARGARINE CO. (LIM.). Astbury, J. 2nd March.

Trade Name—Similarity—Injunction.

Where a large retail provision merchant, with many shops all in Scotland and the North of England, trading since 1904, *and well known in the trade as the Butter Dairy Co., sought to restrain by injunction a new company about to commence wholesale trade in a secret process for the manufacture of margarine, with offices in London, under the name (taken quite innocently, without ever having heard of the Buttercup Dairy Co. or its owner) of the Buttercup Margarine Co. (Limited).*

Held, (1) *that the injunction must go to restrain the defendants from using the said name as it might occasion a confusion between the two businesses, since the defendants had shewn no reason why they adopted or should continue to use the word "Buttercup," or that they would lose by changing the name, whereas the plaintiff had shewn a probability of damage by its continuance;* (2) *that the jurisdiction is not founded on a fraud or loss of property only.*

Hendriks *v.* Montague (1881, 17 *Ch. D.* 638) *commented upon.*

This was a motion for an injunction to restrain the defendants from using or carrying on business under the name of the Buttercup Margarine Co. (Limited) or any name colourably resembling the plaintiff's trade name, or otherwise carrying on business under any description calculated to produce the belief that the defendant company's business was that of the plaintiff or a branch or department thereof. It was agreed to treat the motion as the trial of the action. The facts were as follows:—The plaintiff's business was that of a wholesale and retail provision merchant in Scotland, and in 1904 he began opening retail shops for butter, margarine, &c., carrying on a large retail business under the trade name of the Buttercup Dairy Co. He had a great number of shops, all in Scotland and the North of England. His turnover was very large, and his business was known to the public as the Buttercup Company. His goods were bought in his trade name from Denmark, Holland, and the United Kingdom. In November, 1916, the defendant company was incorporated as a private company, under the name of Buttercup Margarine Co. (Limited), with offices in Westminster, and for the primary purpose of doing wholesale business in margarine manufactured by their secret process, although the memorandum authorized retail trade. The evidence proved to the satisfaction of the Judge that the defendants adopted the name, including the word "Buttercup," quite innocently, having never heard of the plaintiff or his business. Evidence went to shew that the plaintiff's trade name was well-known, and that the distinctive feature of it was the word "Buttercup," and there would be confusion with the defendants' goods. The defendants pointed out that they were wholesale manufacturers, and did not intend to do retail business. When they started business they proposed to sell their brand of margarine under a name not yet selected, but in no way resembling the name of their company. Advertisements were not yet issued. They submitted there would be no confusion, as the class of business and the area of business were wholly different, and that they had a right to use the word "Buttercup" if they so desired in these circumstances. They contended that the jurisdiction to restrain them rested either upon fraud or upon property, and that there was accordingly no jurisdiction in this case to restrain them. Counsel for them referred to Buckley on Companies, 9th ed., p. 14; *Turton* v. *Turton* (42 Ch. D. 128), *Aerators (Limited)* v. *Tollett* (1902, 2 Ch. 319), and other cases.

Astbury, J., after stating the facts, said:—The defendants have taken the name in this case quite innocently, and the ground of the Court's interference in such cases is that the use of the defendant company's name is calculated to deceive and so to divert business from the plaintiff to the defendant company, "or to occasion a confusion between the two businesses." If this is not made out there is no case. Calculated to deceive "does not mean calculated to deceive at the date of the proceedings." The Court must have regard to the way in which the business might be carried on in the future, and not only consider the way in which it is carried on at the date of the proceedings: see Kerly on Trade-Marks, 4th ed., at p. 548, and *Hendriks* v. *Montague* (*supra*). The present case is very near the line. The defendants sell wholesale to their customers under a special brand not resembling their name, but it would not be surprising if their margarine became identified with their name in the hands of the retailer and was sold as "Buttercup margarine," so that the purchasers might think they were obtaining the plaintiff's margarine, and other confusion might arise. It is not unusual for a dairy company which sells margarine to manufacture it by means of an allied company; for instance, the Maypole Dairy Co. had an allied company for the manufacture of margarine, called the Maypole Margarine Works (Limited). The public might well come to suppose that the defendants' margarine was manufactured by the plaintiffs. Again, the defendants might purchase their raw materials from the same foreign firms from which the plaintiffs purchased his margarine. Confusion might arise, and, in certain circumstances, the plaintiff might suffer in credit or reputation. As the defendants have shewn no reason why they adopted or should continue the word "Buttercup" in their title and would suffer no injury by changing their name, whereas the plaintiff has shewn a probability of damage by its continuance, I accordingly grant the injunction.—Counsel, *The Hon. Frank Russell*, K.C., and *Ricardo; Cunliffe*, K.C., and *Owen Thompson*. Solicitors, *Neve, Beck, & Kirby; D. E. Bowen Davies*.

[Reported by L. M. May, Barrister-at-Law.]

King's Bench Division.

BRIGHT v. ROGERS. Div. Court. 8th March.

COUNTY COURT—PROCEDURE—ACTION FOR SALE OF GOODS—DEFENCE OF WARRANTY—NOTICE OF STATUTORY DEFENCE—"IN THE NATURE OF SET OFF"—SALE OF GOODS ACT, 1893 (56 & 57 VICT. c. 71), s. 53—COUNTY COURT RULES, 1903, 1914, ORD. 10, R. 10.

The defence of breach of warranty set up to a claim for the price of goods is not a statutory defence of which it is necessary to give notice, under ord. 10, *r.* 10, *of the County Court Rules*, 1903, 1914, *of the intention to rely on the defence of warranty under section* 53 *of the Sale of Goods Act*, 1893.

Appeal from the county court of Stow on the Wold. In May, 1915, the defendant sold to the plaintiff a mare for £56, with a warranty of soundness. The plaintiff alleged that the mare was unsound, and that, at the request of the defendant, he agreed to keep her until the defendant could take her back. Subsequently the defendant denied the warranty, and refused to take the mare back. In the action for the keep of the mare, claiming £8 10s. 6d., the defendant counter-claimed for £56, the price of the mare. At the trial the plaintiff set up as a defence to the counter-claim the breach of warranty, but notice of intention to plead this defence had not been given. The defendant objected that the defence was a statutory defence, and that the Sale of Goods Act, 1893, ought to have been pleaded. The county court judge held that the statutory defence must be set up in accordance with the county court rules, and that as this had not been done, there was no defence to the counter-claim, and he entered judgment for the defendant on the claim and counter-claim. The plaintiff appealed, on the ground that the judge was wrong in law in holding that the defence was a statutory defence of which notice ought to have been given.

THE COURT allowed the appeal.

BRAY, J.—If the view of the county court judge were right, it would apply to a vast number of cases. Before the Sale of Goods Act, 1893, it was the law in the old days of pleading that the defendant, on being sued for the price, could give evidence of a warranty and breach, and claim a diminution of the price: *Street* v. *Blay* (1831, 2 B. & Ad. 456); *Davis* v. *Hedges* (1871, 6 Q. B. 687), where Hannen, J., quoted the judgment of Parke, B., in *Mondel* v. *Steel* (1841, 8 M. & W. 858). The matter came before the Court in *Brutton* v. *Branson* (1898, 2 Q. B. 219), where the question was whether the same rule must be applied in a case under section 4 of the Sale of Goods Act, which reproduces section 17 of the Statute of Frauds, as under the latter statute itself, and it was held that the defendant was not entitled to rely on that section unless he had filed a notice of his intention to do so in accordance with ord. 10, rr. 10 and 10a, of the County Court Rules, 1889. Then it is said that the counter-claim was in fact a set off, and there is no doubt that, under the rules of the county court, notice must be given of the defence of set off. In my opinion the defence to the counter-claim was not a set off. But it is said it is "in the nature of a set off," and if notice were not given it would take the other party by surprise. But there is no rule in the County Court Rules to that effect. The rule we are dealing with is ord. 10, r. 10, of the County Court Rules, and that order is confined to cases coming within rules 12 to 20. There is no such rule as to surprise as in ord. 19, r. 15, of the High Court Rules. The defence to the counter-claim is, therefore, neither within the rules requiring notice of statutory defences nor of set off, and there must be a new trial.

HORRIDGE, J., concurred in this judgment.—COUNSEL, *A. F. Clements*, for the appellant; *Lort-Williams*, for the respondent. SOLICITORS, *Helder, Roberts, & Co.*, for *Frank Treasure*, Gloucester, for appellant; *Smiles & Co.*, for *Steel, Millard, & Brown*, Cheltenham, for respondent.

[Reported by G. H. KNOTT, Barrister-at-Law.]

Probate, Divorce, and Admiralty Division.

PHILLIPS *v.* **PHILLIPS.** Low, J. 15th February.

WIFE'S PETITION FOR RESTITUTION OF CONJUGAL RIGHTS—DEED OF SEPARATION—EFFECT OF COVENANT NOT TO TAKE PROCEEDINGS FOR RESTITUTION.

In a suit for restitution of conjugal rights, where the parties are living apart under a deed of separation in which there is a covenant not to sue for restitution of conjugal rights, if one party repudiates and does not set up the deed in answer, the other party is entitled to sue for restitution.

This was a suit for restitution of conjugal rights brought by Helen Minnie Phillips against her husband, Hugh Richard Phillips, a medical practitioner, of 7, Dawson-place, Bayswater. They were married on 28th April, 1904. The marriage was not happy, and in August, 1906, the petitioner left the respondent, and went to live with her people. On 13th January, 1908, the parties entered into a deed of separation, which provided, *inter alia*, that they should live separate and apart, and that neither of them should require or compel or attempt to compel the other to return to cohabitation by legal proceedings for restitution of conjugal rights or otherwise. The wife had separate estate, and a fund under the separation agreement was furnished by her. She made regular payments under it. On 26th July, 1910, the respondent wrote asking her to return. The petitioner was not then willing to do so. Later she wished to return, and wrote to her husband to that effect. Respondent wrote a reply refusing to return, and had not set up the deed or defended the petition. Counsel, after calling the petitioner, argued that the deed was no bar to her petition. The respondent had repudiated it by the letter of 26th July, 1910. He cited *Tress* v. *Tress* (1887, 12 P. D. 128), *Beauclerk* v. *Beauclerk* (1895, P. 220), *Hardie* v. *Hardie*, and distinguished *Kennedy* v. *Kennedy* (1907, P. 49), *Balcombe* v. *Balcombe* (1908, P. 176).

LOW, J.—In this case there seems to be some conflict of authority as to whether the Court is bound to notice a mutual covenant in a deed of separation that the parties will not sue for restitution of conjugal rights, although the husband neither appears nor sets up the deed. In *Tress* v. *Tress* (*ubi supra*), Hannen, J., was of opinion that in such circumstances it was not for the Court to set up such a defence for a husband who does not choose to do so. The deed, of course, might have disclosed connivance or collusion, or some fact that would be an absolute or discretionary bar. There is nothing of this kind in the present case, nor was there in *Tress* v. *Tress* (*ubi supra*). In *Kennedy* v. *Kennedy* (*ubi supra*), Sir Gorell Barnes seems to have regarded the decision in *Tress* v. *Tress* as having turned on the fact that the covenants in the deed had not been performed by the husband. I think Hannen, J.'s decision was not on that point. *Kennedy* v. *Kennedy* was an undefended case, and was not argued. These two decisions cannot be reconciled. I feel bound to follow *Tress* v. *Tress*. In a covenant such as this—where no question of public policy or statutory bar arises—either party might take advantage of the covenant or both together might set it aside. In such a case it is not for the Court to raise a defence not put forward by a party. The Court is entitled to assume that there are circumstances which prevent a party from availing himself of such a covenant. In the present case there is a letter of 26th July, 1910, from the husband which clearly shews that as long ago as that date he did not regard this deed as binding, and wished to act as if it were non-existent. I am not surprised, therefore, that he does not now appear to set up the covenant. Both on the facts of this case and on general principles, I think the wife is entitled to her decree.—COUNSEL, *J. C. Priestley*, K.C., and *W. O. Willis*. SOLICITORS, *Chester & Co.*

[Reported by C. G. TALBOT-POSSONBY, Barrister-at-Law.]

New Orders, &c.

New Statutes.

On the 28th inst. the Royal Assent was given to the following Acts:—

Consolidated Fund (No. 2) Act.
Census of Production Act.
Railway Passenger Duty Act.
Ecclesiastical Services (Omission on Account of War) Act.
Grand Juries Suspension Act.
Ministry of National Service Act.
Coal Mines Regulation (Amendment) Act.

Indictments Act, 1915.

For the purposes of this Act I do, pursuant to section 2, sub-section 1, reappoint to act with myself for a period of one year as from 19th February, 1917, a Rule Committee as follows: The Honble. Mr. Justice Avory; Sir Robert Wallace, Chairman of Quarter Sessions, County of London; R. D. Muir, Esq., Recorder of Colchester; Sir Herbert Stephen, Bart., Clerk of Assize of the Northern Circuit; W. B. Prosser, Esq., Clerk of the Peace for the County of Kent; Herbert Austin, Esq., Clerk of the Central Criminal Court.

Dated this 26th day of March, 1917.

(Signed) READING C.J.

War Orders and Proclamations, &c.

The *London Gazette* of 23rd March contains the following:—

1. An Order in Council, dated 23rd March, removing from the Statutory List, under the Trading with the Enemy (Extension of Powers) Act, 1916, the following name:—McNear, George W., Inc., Insurance Exchange Building, 433, California-street, San Francisco, California.

2. Two Orders of the Ministry of Munitions, dated 23rd March (printed below), relating to Electric Lamp Glass and Spelter.

3. An Order of the Central Control Board (Liquor Traffic), dated 22nd March (printed below), as to Good Friday.

4. An Admiralty Order, dated 21st March (printed below), made under Defence of the Realm Regulation 35A, which empowers the Admiralty, or Army Council, or the Minister of Munitions to make rules for Explosive Factories and Stores.

5. An Admiralty Notice to Mariners, dated 20th March (printed below), of an Extension of the Dangerous Area in the North Sea.

6. A Notice by the Ministry of Food that the following Orders have been made by the Food Controller :—

The Freshwater Fish Order, 16th March (printed below).
The Sugar (Restriction) Order, 16th March (printed *ante*, p. 355).

Copies of the Orders and of all other Orders made by the Food Controller, printed as Statutory Rules and Orders, and receivable in evidence under the Documentary Evidence Acts, can be purchased through any bookseller, or directly from H.M. Stationery Office, at the following addresses :—Imperial House, Kingsway, London, W.C. 2; 37, Peter-street, Manchester; 1, St. Andrew's-crescent, Cardiff; 23, Forth-street, Edinburgh; or E. Ponsonby (Limited), 116, Grafton-street, Dublin.

The *London Gazette* of 27th March contains the following :—

7. A Foreign Office (Foreign Trade Department) Notice, dated 27th March, that additions or corrections have been made to the lists published as a supplement to the *London Gazette* of 16th February, 1917, of persons to whom articles to be exported to China and Siam may be consigned.

8. A Notice that Orders have been made by the Board of Trade, under the Trading with the Enemy Amendment Act, 1916, requiring two more businesses to be wound up, bringing the total to 431.

9. An Order of the Minister of Munitions, dated 22nd March (printed below), including Wrought-Iron Scrap as War Material under Defence of the Realm Regulation 30A, and fixing maximum prices.

10. A Notice by the Minister of Munitions, dated 22nd March, of a Modification of the General Permit for dealing in certain classes of War Material, dated 1st November. The modification relates to the price of Second-hand Rails.

Munitions Orders.

Electric Lamp Glass.

Ministry of Munitions of War,
23rd March, 1917.

Manufacture.

(1) No person shall manufacture any electric lamp glass unless the purpose for which such glass is required has been approved. Such approval must be evidenced by one or other of the following, which must be quoted by the ordering firm to the manufacturer, together with the purpose for which the glass is required :—

(a) Reference to and number of an Admiralty, War Office or Ministry of Munitions contract for which the glass is necessary; or

(b) A certificate authorising the supply issued on behalf of the Minister of Munitions by the Director of Optical Munitions and Glassware Supply.

(2) Manufacturers of Electric Lamp Glass are required to render to the Director of Optical Munitions and Glassware Supply at regular intervals full and accurate returns of their manufacture and output of electric lamp glass in accordance with the directions from time to time given by the said Director.

(3) [Purchase and Sale Outside the United Kingdom.]

Definition Clause.

(4) For the purpose of this Order Electric Lamp Glass shall include all glass intended for use in the manufacture of electric lamps except glass used or intended for use in lamp caps for insulating purposes, but shall not include glass shades and similar accessories.

(5) All applications in reference to the above Order should be made to the Director of Optical Munitions and Glassware Supply, Ministry of Munitions of War, 117, Piccadilly, W. 1.

Spelter.

1. No person shall, as from the date hereof until further notice, purchase, sell, or, except for the purpose of carrying out a contract in writing existing prior to such date for the sale or purchase of spelter, enter into any transaction or negotiation in relation to the sale or purchase of spelter situated outside the United Kingdom except under and in accordance with the terms of a licence issued under the authority of the Minister of Munitions.

2. No person shall, as from the date hereof until further notice, purchase or take delivery of any spelter situated in the United Kingdom except under and in accordance with the terms of a licence issued under the authority of the Minister of Munitions, or sell, supply or deliver any such spelter to any person other than the holder of such a licence and in accordance with the terms thereof; provided that no such licence shall be required in the case of any sale, purchase or delivery of such spelter for the purpose of necessary repairs or renewals involving the use of not exceeding 1 cwt. of such spelter.

3. No person shall, as from the date hereof until further notice, except under and in accordance with the terms of a licence issued under the authority of the Minister of Munitions, use any spelter for the purpose of any manufacture or work except :—

(a) For the purpose of a contract or order for the time being in existence certified to be within Class "A" in the order of the Minister of Munitions as to priority dated the 8th March, 1917, and made in substitution for Circular L.33 [*ante*, p. 338.]

(b) For the purpose of necessary repairs or renewals involving the use of not exceeding 1 cwt. of spelter.

4. [Monthly Returns.]

5. For the purpose of this Order the expression spelter shall mean spelter of all qualities, and shall include sheet and rolled zinc, scrap zinc, hard spelter, dross, zinc ashes, flux skimmings and zinc dust.

6. All applications for licences should be made to the Director of Materials (A.M.2.C.), Ministry of Munitions, Hotel Victoria, London, W.C. 2, and marked "Spelter Licence."

Liquor Control Order.

THE SALE AND SUPPLY OF INTOXICATING LIQUOR ON GOOD FRIDAY IN ENGLAND AND WALES.

General Order.

We, the Central Control Board (Liquor Traffic), in pursuance of the powers conferred upon us by the Acts and Regulations relating to the Defence of the Realm hereby make the following General Order :—

Areas to which the Order applies.

1. This Order applies to all areas or parts of areas situate in England or Wales to which the Defence of the Realm (Liquor Control) Regulations, 1915, have been applied.

Hours during which intoxicating Liquor may be sold on Good Friday.

2. The hours during which intoxicating liquor may (subject to the provisions of Article 3 hereof) be sold and supplied on Good Friday in licensed premises and clubs whether for consumption on or off the premises shall be as follows :—

(a) In such part of the Western Border Area as is situate in England, the hours between 12.30 p.m. and 2.30 p.m. and 6.30 p.m. and 9 p.m. for consumption on the premises, and the hours between 12.30 p.m. and 2.30 p.m. and 6.30 p.m. and 8 p.m. for consumption off the premises.

(b) In the Welsh Area and the West Gloucestershire Area, the hours between 12.30 p.m. and 2.30 p.m. and between 6 p.m. and 9 p.m. for consumption on the premises, and the hours between 12.30 p.m. and 2.30 p.m. and between 6 p.m. and 8 p.m. for consumption off the premises.

(c) In each of the other areas, the hours during which by the provisions of Article 2 of the Orders of the Board for the said areas such sale or supply for consumption on or off the premises is permitted on Sundays.

And Article 2 of each of the said Orders of the Board shall be read as if the provisions of this Article were inserted therein.

Sale of Spirits for Consumption off the Premises Prohibited.

3. No spirits to be consumed off the premises shall be sold or supplied in any licensed premises or club or be dispatched or taken therefrom on Good Friday, and Article 3 of each of the said Orders shall be read as if the provisions of this Article were inserted therein.

Given under the Seal of the Central Control Board (Liquor Traffic) this twenty-second day of March, 1917.

D'ABERNON,
Chairman.

HENRY CARTER,
Member of the Board.

Explosive Factories and Stores.

ADMIRALTY ORDER.

In pursuance of the powers conferred upon the Admiralty by Regulation 35A of the Defence of the Realm Regulations, the Lords Commissioners of the Admiralty hereby make the following rules:—

1. *Application.*

These Rules shall apply to every person who is employed or who is in or in the vicinity of any store, wharf, vessel, vehicle, receptacle or other premises or place in or upon which any ammunition or explosive substance or any highly inflammable substance required for the production thereof is handled, carried, stored or deposited in the course of or for the purpose of transit under Admiralty direction.

The posting of these Rules conspicuously in or upon any such premises or place as aforesaid shall be deemed to be notice of their contents to all persons employed or being therein or in the vicinity thereof.

2. *Smoking, Tobacco, Matches, Lights, &c.*

No person while he is employed or is in or in the vicinity of any such store, wharf, vessel, vehicle, receptacle, premises or place, as aforesaid, shall either smoke or have in his possession any match or apparatus of any kind for producing a light or any tobacco, cigar, cigarette, pipe or contrivance for smoking, except as may be expressly sanctioned by an officer in the employ of the Admiralty or by some person authorised by him.

3. *Searching.*

Any Police Constable or anyone authorised by an Officer as aforesaid may search at any time any person entering or being in any such store, wharf, vessel, vehicle, receptacle, premises or place as aforesaid, and may examine any such person's clothing and any bag, basket, parcel or other article he may be carrying; and any such person shall if so required by any Police Constable or by anyone authorized, as aforesaid, submit to be searched, and shall comply with any reasonable directions or regulations given or made with the object of enabling the search to be carried out. Provided that in no case shall any female person be searched by or in the presence of anyone but a female person.

4. *Intoxication.*

No person in a state of intoxication shall enter or remain in or in the vicinity of any such store, wharf, vessel, vehicle, receptacle, premises or place as aforesaid.

Any person failing to comply with the above Rules will be guilty of an offence against the Defence of the Realm (Consolidation) Regulations and liable on summary conviction to imprisonment with or without hard labour for a period not exceeding six months or to a fine not exceeding £100 or both.

Given under our hands this 21st day of March, 1917.

Lionel Halsey.
E. G. Pretyman.

Admiralty Notice to Mariners.

No. 519 of the year 1917.

NORTH SEA.

Caution with regard to Dangerous Area.

Former Notice.—No. 186 *of* 1917; *hereby cancelled.*

Caution.

In view of the unrestricted warfare carried on by Germany at sea by means of mines and submarines, not only against the Allied Powers, but also against Neutral shipping, and the fact that merchant ships are constantly sunk without regard to the ultimate safety of their crews, H.M. Government give notice that on and after 1st April, 1917, the area in the North Sea rendered dangerous to all shipping by operations against the enemy will be extended as undermentioned, and it should therefore be avoided.

Dangerous Area.

The area comprising all the waters except Netherlands and Danish territorial waters lying to the southward and eastward of a line commencing three miles from the coast of Jutland on the parallel of lat. 56° 00′ N., and passing through the following positions:—

(1) Lat. 56° 00′ N., long. 6° 00′ E.
(2) Lat. 54° 45′ N., long. 4° 30′ E.
(3) Lat. 54° 23′ N., long. 5° 01′ E.
(4) Lat. 53° 25′ N., long. 5° 05½′ E., and from thence to the eastward, following the limit of Netherlands territorial waters.

Note.

This Admiralty Notice to Mariners is a revision of the former Notice quoted above.

Authority.—The Lords Commissioners of the Admiralty.

By Command of their Lordships,

J. F. Parry, *Hydrographer.*

Hydrographic Department, Admiralty, London, 20th March, 1917.

Freshwater Fish

ORDER.

In exercise of the powers conferred upon him by Regulation 2F of the Defence of the Realm Regulations, and of all other powers enabling him in that behalf, the Food Controller hereby orders as follows:—

1. Any person may during the period between the 15th March, 1917, and 15th June, 1917 (both inclusive), buy, sell, expose for sale or have in his possession for sale any freshwater fish, certified by the Fishmongers' Company to be freshwater fish imported from abroad or from Scotland or Ireland.

2. For the purposes of this Order the expression "freshwater fish" shall have the meaning assigned by the Freshwater Fisheries Act, 1873.

3. This Order may be cited as the Freshwater Fish Order, 1917.

Devonport, Food Controller.

16th March, 1917.

The War and Contracts.

The President of the Board of Trade has appointed
Lord Buckmaster (chairman),
Mr. C. S. S. Guthrie,
Mr. Lennox Lee,
Mr. F. D. Mackinnon, K.C.,
Mr. Walter Raine,
Mr. F. G. Rice, and
Mr. T. Worthington,

to be a committee to consider and report on the position of British manufacturers and merchants after the war in respect of contracts entered into by them prior to the war with persons or companies in the United Kingdom or in Allied or neutral countries, the fulfilment of which has been prevented or impeded by the war, and as to the measures, if any, which are necessary or desirable in this respect.

Societies.

Selden Society.

The annual general meeting of the Selden Society was held on Wednesday in the council Room, Lincoln's-inn, Lord Parker of Waddington (President) taking the chair. Among those present were Lord Justice Warrington, His Honour Judge Fossett Lock, Sir Matthew Ingle Joyce, Sir Frederick Pollock, Mr. G. Boydell Houghton, Mr. Cyprian Williams, Mr. Paley Baildon, Mr. H. L. Farrer, Mr. W. C. Ballard, Mr. A. E. Stamp, Mr. W. S. Houldsworth, Mr. Herman Cohen, Mr. J. Herbert Cunliffe, and Mr. H. Stuart Moore, Secretary.

The Chairman said that of all the problems which had been brought into prominence by the crisis through which this country and the whole of Europe was passing, perhaps the most important was the future of what was called international law, and he thought it might be worth while directing attention to certain historical analogies which, though analogies were proverbially dangerous, might throw some light on the problem. Law had been and might be defined in various ways, but in every definition of law which he had come across it was expressly or tacitly assumed that there existed an aggregate of individuals united, however loosely, by ties of common interest or common sentiment, and that there existed a certain communal life among the members of that aggregate. He thought that a little reflection would show that no sort of communal life was possible unless each member of the community could count with reasonable certainty on the action of his fellow-members under circumstances, at any rate, of normal occurrence, and therefore it seemed that communal life must involve certain customary rules of conduct which, in process of time, tended to become obligatory, and a breach of which, therefore, gave rise to a sense of grievance on the part of the person injured by the breach. The history of law, therefore, would appear to be capable of being divided into two branches. The first would deal with the growth and development of those rules of conduct which tended to become obligatory, and the breach of which gave rise to grievances; the second would deal with the remedies which had from time to time been adopted for redressing those grievances. It was to the latter branch rather than the former he desired to call attention. In every fully developed system of law the remedy for grievances was sought through judicial tribunals, based ultimately upon the organised force of the community, but in the earlier stages of the growth of law the person aggrieved had to a very large extent to have recourse to what had been called self-help. Assisted by the members of his family, or his friends, he had to take matters into his own hands and himself to exact retribution. Individual force was, however, a remedy of doubtful validity. It might be opposed by force on the part of the wrongdoer, and the latter might prove the more powerful. In that case the wrong would go unredressed. In a society where force was the chief remedy and wrongs went consequently unredressed, the weaker members of the community would soon conclude that they could not stand alone. To use an old expression, they must get them good lordship, and lordship, however good, involved a sacrifice of independence. The tendency, therefore, was to the growth of overlords, each ready to make private war on the others, but each guaranteeing his own

subordinates protection against the wrongdoer. This was a disintegrating tendency, and society would not again be united until one of those overlords had gained supremacy over the others, the peace of each overlord merging ultimately in the peace of our Lord the King. But he thought it was possible to trace another tendency, since the common interest and a common sentiment upon which alone the existence of a community of individuals must depend might so develop and become so strong that the breach of certain rules of conduct might give rise to a sense of grievance, not only on the part of the person directly affected, but on the part of members of the community generally. The wrongdoer might be considered as having put himself outside the protection of the customary rules of conduct which prevailed in the society to which he belonged, to have in fact become an outlaw. The wrongdoer might raise a hue and cry. His neighbours might feel it incumbent upon them to resist him by all possible means, and summary justice might thus be done. This procedure had proved efficacious in various periods of our own history, and it played a great part in the nineteenth century in the settlement of the Western States of America. Turning to what was called international law, the very term assumed the existence of a community or society in which individual States were the members, and in which each State could count with more or less certainty on the action of other States under normal circumstances. It assumed, therefore, the existence of customary rules of conduct governing international relationships, rules of conduct which had a tendency to become obligatory and the breach of which gave a sense of grievance on the part of the person affected by the breach. But hitherto the sole remedy had been in the nature of self help, the armed power of one State being matched against the armed power of the other, the armed power of the State which did wrong against the armed power of the State which suffered the wrong, and, as a rule, other States had assumed what was called a position of neutrality. As in the case of a community of individuals so in the case of a community of States individual force was a doubtful remedy. Indeed, where the State which did the wrong was powerful and the State which suffered the wrong was weak, as in the case of the Prusso-Danish war, it was no remedy at all. In such a case the wrong went entirely unredressed, and the existence of unredressed wrongs must lead the weaker nations in the society of nations to feel that they could not stand alone, that they would have to obtain the protection of some more powerful State. They would have in fact to get good lordship. He had been reading lately several German publications written during the war, and he found that German writers, confident in the victory of Germany, were already emphasising this necessity. Their weaker neighbours, they said, could no longer stand alone, they must submit to her over lordship. They would, it was true, to some extent sacrifice their independence, but they would gain the protection of her peace. On these lines she hoped to extend her empire and, after a series of future wars in which she obtained the supremacy over other lords, to establish a universal German peace. It appeared to him that this development, or at any rate a development on these lines, was possible; indeed he thought it perfectly probable if self-help remained the only remedy. Those of them, therefore, who, while desiring a world peace, were averse to its establishment after a long series of wars through the medium of a single predominant world war, had to devise a remedy other than self help whereby the grievances caused by a breach of international rules were to be redressed; and if they were to follow the analogy of municipal matters they would find such a remedy in the international hue and cry, or the establishment of international tribunals based upon an organised international force. It might, he thought, be well doubted whether the society of nations was so developed as to admit of the establishment of international tribunals or the organisation of international force, but he was not without hope that the principle of the hue and cry might be adopted in future in international relations. He seemed to discern the germ of such development in what had happened during the last three years. It might be, and probably was, that we should have been bound ultimately in our own interest to take up arms against the Central Powers; but the fact remained, and was beyond dispute, that we did take up arms because of the invasion of Belgium contrary to every obligation of international law, and he thought it possible that others of our Allies were influenced by the same conclusion. The events of the last few years might lead in future to a general and confident expectation, if not an international agreement, that in the case of an attack by one Power on the sovereignty or independence of another all Powers would join in exacting retribution. Such an expectation or such an agreement would be a great safeguard for world peace. It was, in his opinion, doubtful whether Germany would have commenced this war had she believed that we should act as we had done. He thought it quite certain that Germany would never have commenced this war had she believed that the United States and other nations who had assumed the attitude of neutrals would have acted in the same way. He suggested, therefore, that the next development of the society of nations might be, and perhaps ought to be, in the direction of the abolition of neutrality. This might be a hard saying for those of them who had devoted their labours and efforts towards the improvement and the codification of the laws or rules of conduct affecting neutrals in time of war, but none the less he thought that that was the direction which the development of international relationships should take. And it was worth noticing that it would have at any rate one great advantage, that it would simplify the application of sea power towards the repression of the wrongdoer.

The CHAIRMAN moved the adoption of the report. He observed that the publication for the year was the "Year Books of 5 Edward II.," edited by Mr. W. C. Bolland. Owing to delays attributable to the war, the printing was not completed during the year, but the volume would shortly be issued. The publication for 1917 would be a volume of the "Year Books of Edward II.," edited by Sir Paul Vinogradoff and Dr. Erlich, and there was every prospect that the members would obtain the work at no very distant date. Provisional arrangements had been made for the following further publications:—Other volumes of the "Year Books of Edward II."; a volume of "Select Ecclesiastical Pleas," by Mr. Harold D. Hazeltine and Mr. Hilary Jenkinson; the second volume of the "Law Merchant," by Mr. Wilfrid Hooper; an edition of the "Liber Pauperum" of Vacarius, by Mr. F. de Zulueta; a second volume of "Public Works in Mediæval Law," by Mr. Cyril Flower; a volume of "Select Entries from the Court Books of Chartered Companies," by Mr. Cecil T. Carr; and a volume of "Select Entries from the Exchequer of Pleas," by Mr. Hilary Jenkinson.

The Report was adopted.

Mr. G. BOYDELL HOUGHTON was elected vice-president in the place of Lord Justice Warrington, who had served the office for the last three years, and to whom a vote of thanks was accorded.

The following members of the council retired under the rules:—Mr. W. C. Bolland, Mr. G. Boydell Houghton, Professor Courtney Kenny, Sir Matthew Ingle Joyce, and Mr. Cyprian Williams, and they were re-elected with the exception of Mr. Boydell Houghton, who had become vice-president, Mr. Henry Farrer being elected in his place. Lord Justice Warrington was elected to the vacancy in the council caused by the death of Sir Henry Johnson. Mr. R. F. Norton, K.C., was appointed auditor.

The Union Society of London.

The Society met at the Middle Temple Common Room on Wednesday, 28th March, 1917, at 8 p.m. The subject for debate was: "That our present fiscal policy of Free Trade should be continued after the war." Opener, Mr. Morden. Opposer, Mr. Kingham. The motion was lost.

Gray's Inn.

Lieut.-General Smuts, K.C., dined with the Treasurer (the Attorney-General) and Masters of the Bench in Gray's Inn Hall on Wednesday night. The dinner was served in accordance with the requirements of the Food Controller, and there were no potatoes.

The following guests were invited to meet General Smuts:—The Lord Chancellor, the Duke of Marlborough, Lord Derby, Lord Halsbury, Field-Marshal Lord French, the Lord Chief Justice, Lord Beaverbrook, Sir Edward Carson, the President of the Probate Division, Lord Justice Pickford, Admiral Sir John Jellicoe, General Sir William Robertson, Sir John Simon, K.C., M.P., General Sir James Willcocks, Lieutenant-General Sir Nevil Macready, Sir Gordon Hewart (Solicitor-General), Mr. Winston Churchill, and Captain the Hon. Frederick Guest (A.D.C. to General Smuts).

The Benchers present, in addition to the Treasurer, were:—Master His Honour Judge Mulligan, K.C., Master M. W. Mattinson, K.C., Master Lewis Coward, K.C., Master C. A. Russell, K.C., Master W. T. Barnard, K.C., Master H. E. Duke, K.C., M.P., Master H. F. Manisty, K.C., Master Edward Clayton, K.C., Master Arthur Gill, Master Vesey Knox, K.C., Master the Hon. Sir Richard Atkin, Master F. A. Greer, K.C., Master Montagu Sharpe, Master T. M. Healy, K.C., M.P., and Master Lieutenant-Colonel Ivor Bowen, K.C.

During the hearing of a case in the Chancery Division on the 22nd inst., Mr. Justice Eve said:—"I went down to the seaside last week-end, and found one of my houses, which had been unoccupied, filled with soldiers. I had had no previous notice whatever from the War Office, and I consider it is a most high-handed proceeding. I am now in communication with the War Office about it."

Belgian Relief Work.

A message from the *Times* correspondent at Washington, dated 25th March, says :—

It is announced that Mr. Brand Whitlock, the United States Minister at Brussels, together with the American relief workers in Belgium, will be withdrawn. This announcement and the official comments with which it is accompanied show that the Government has given up all hope of the restoration of even tolerable relations with Germany.

The Government bases its action squarely upon the impossibility of trusting Germany's word. The torpedoing of relief vessels and the refusal of Germany even to answer United States protests against this "flagrant violation" of her engagements has rendered impossible a situation already bad enough, and demands the recall of the relief workers. Germany has, it is true, given verbal promises that Americans would be free to leave Belgium when they desired, but "the German Government's observance of its other undertakings has not been such that the State Department would feel warranted in accepting responsibility for leaving these American citizens in German-occupied territory."

It is announced at the Relief Commission's headquarters in New York that the Commission's work will not be allowed to suffer, but that it will continue through the agency of the Dutch, and, possibly, other neutrals, with whom Mr. Hoover, the chairman, has gone to Europe to make the necessary arrangements.

A message from the *Times* correspondent at Amsterdam, dated 27th March, says :—

The *Nieuwe Courant* contradicts the report that the work of the Belgian Relief Committee will henceforth be under Dutch military authority. It is now under the patronage of the Queen of the Netherlands and the King of Spain. The American Commission's headquarters will remain in London and a branch office will be maintained at Rotterdam. The offices and management in Brussels, which cease to be in American hands, will be under a mixed commission, concerning the constitution of which negotiations are proceeding between the Dutch and Spanish Governments. At the Dutch Government's invitation, Jonkheer Ruys de Beerenbrouck, member of the Second Chamber, assumes control of the Brussels office, while some young Dutchmen are taking up the work of control and supervision in Belgium and Northern France. Many university students, in response to an appeal by the Foreign Minister, will undertake the work that the Americans are now giving up.

Civil Conscription.

We take the following from the "Harvard Law Review" for January :—

That the State may, in case of necessity, compel its citizens to do military service is consonant with our ideas both of common and of constitutional law. That the satisfaction of any civil need of the State may likewise be compelled, however, is a conception new to us, and one that will be regarded by most lawyers with instinctive hostility. But this compulsion, which, in lieu of a better term, may be called civil conscription, is, it is submitted, settled in practice and sound in principle. The service, both military and civil, which the feudal system exacted, had a larger warrant than any theory of land tenure could give, in the inherent right of the State to safety and to preservation. The real basis of the conscription is the necessity of the State, and accordingly the considerations of liberty of the individual, and of equality of treatment, must be wholly subordinated to that. Thus, even a capricious and sometimes deliberately unequal conscription has been lawfully practised in England for centuries, in impressment for the Navy. That the State may need civil service equally as much as military is obvious. Both kinds of service are essentially alike, for both sacrifice the individual to the nation's welfare with the same clear purpose. And not only are military conscription and civil conscription identical in nature, but also the difference in form between them may be imperceptible. The common law is, then, that any service whatever, whether military or civil, which the State requires, it may exact of its citizens.

It is, however, true that comparatively few instances of civil conscription are recorded in the books. The classic example is the holding of public office. The resignation of any public officer is effective only at the will of the sovereign. And one duly elected to office may be compelled to accept the place and to perform its duties. A recent California case suggests the possibility of a still further infringement on the liberty of the individual, raising the problem whether the State may compel a man to run for office after he has been nominated, and the even more important question whether it may compel him to seek the nomination in the party primaries which statutes have now generally established. It is submitted that in both of these cases such compulsion may be lawful, since there well may be a public interest sufficient to warrant it. The Conscript Fathers may be conscript in fact. Another continuing public duty whose compulsory performance has been urged is the exercise of the suffrage. The only attempt that has yet been made in any common law jurisdiction to establish compulsory voting has been held unconstitutional as a compulsion of an act of sovereignty. Compulsory jury service has existed almost as long as juries have. So, too, witnesses have been compelled to appear, and labour upon public roads has been conscripted from the beginnings of the common law until the present time. Wherever there is need the State may, at common law, conscript citizens to form a posse to assist in making arrests, to report cases of contagious disease, to extinguish conflagrations, and even to serve in a permanent fire department. Attorneys may be compelled to defend poor persons in courts of law. It is clear that in any emergency, whether one that has arisen in the past or not, citizens may be conscripted to avert danger to the State. Compulsory arbitration, involving conscription for a limited period, may likewise be instituted, as has been done by recent legislation in this country. Nor is there any need for compensation at common law for any service thus compelled by the State.

There are, indeed, no limitations upon the State's conscripting power at common law other than the State's need for, or, more accurately, benefit from the conscription. The benefit must, of course, be so great as to outweigh the detriment to the State that interference with the individual will necessarily cause. In determining the benefit that will flow from the conscription, and hence its legality, the possibility of a species of *sabotage* should be considered seriously. The man compelled to serve may work positive injury to the State while ostensibly he is serving it; or (and this is a more likely contingency) he may either neglect entirely or perform inefficiently the duties which have thus been thrust upon him. It may be urged that, although the State may conscript for what is historically a governmental purpose, it cannot do so for purposes of a (historically) non-governmental business in which the State may have engaged. Such a distinction, however, would be fundamentally unsound, for if the public interest warrants the carrying on of the business by the State, it may also warrant the State's conscription to support it.

The limitations on civil conscription which are peculiar to the United States are likewise few. The Sixth Amendment to the Constitution of the United States expressly provides for compulsory witness service in certain cases. Conscription to serve the State's needs is neither slavery nor involuntary servitude within the meaning of the Thirteenth Amendment. And although a citizen's right to dispose of his own labour as he desires has been construed to be included both in "liberty" and in "property," as used in the Fourteenth Amendment, yet conscription by the State has never been regarded as a deprivation of either liberty or property (since it is a general burden, and inures to the general welfare). A more intricate question than these is raised by the possibility of conscription by a State for a purpose not in harmony with the interests of the United States. The most incisive example of such a State conscription is the military conscription instituted by Alabama, Mississippi, and other States in the course of the Civil War. Such a conscription is, of course, unconstitutional. The converse of this situation is presented when the United States conscripts to the injury of a State. In such a case, if the conscription is for the national welfare (as it would have to be to be otherwise lawful), it should be lawful notwithstanding the injury to the State. Even in the United States, the certain limit to the individual's liberty is the State's necessity. And "necessity" may be in the future, as it has been in the past, translated into terms of policy.

There are numerous references to the article, for which we have not space.

Companies.

Equity and Law Life Assurance Society.

The following are extracts from the statement made at the annual meeting of the above Society, held at No. 18, Lincoln's Inn Fields, London, on 26th March, 1917 :—

The new assurances amounted to £563,631, under 291 policies, of which £500,161 had been retained by the Society.

The gross new premiums amounted to £31,819.

The amount of the total assurances in force at the end of the year was £11,826,613.

The profit on reversions fallen in during the year amounted to £74,161.

Excluding reversions, capital stock of the Law Reversionary Interest Society, Ltd., outstanding premiums and interest and cash at bank, the funds were invested at the end of the year to produce £4 14s. 1d. per cent.

The claims by death under 184 policies amounted to £226,842, and 189 endowment assurances amounting to £149,169 matured. The mortality had been very favourable.

The total funds amounted at the end of the year to £5,234,948.

The expenses of management, including commission, amounted to only £11 11s. per cent. of the premium income.

In the House of Commons, on Wednesday, Mr. Pemberton Billing asked the Prime Minister whether, in view of the privation which the poorer classes were now suffering through food shortage, he would consider the advisability of introducing legislation offering a reward to any person giving information which would lead to a conviction for food hoarding. Captain Bathurst : I have been asked to reply. The expedient suggested by the hon. member is open to so many objections that I hope that no ground may arise for considering it seriously.

Obituary.

Qui ante diem periit,
Sed miles, sed pro patria.

Second Lieutenant Nevile S. Done.

Second Lieutenant NEVILE SAVAGE DONE, Royal Fusiliers, who was killed on 10th March, aged thirty-five, was the elder son of the Rev. William and Mrs. Done, of Groombridge. He was admitted as a solicitor in 1904, and practised at 10, New-square, Lincoln's-inn. He was appointed sergeant almost immediately on his joining the London University O.T.C., and subsequently received his commission. He was killed after being only three days in action. His captain writes: "Although he was only with us for so short a time, he made a very successful start, and won golden opinions at the very first chance he had. When the battalion went into action he had a job in organizing 'carrying-up parties,' which were perfectly managed, and we have been congratulated on the work done and the way it was done. So there is just this, that however long he had lived with us he would never have done finer work than he did on the very first day." Before the war Lieutenant Done had been an enthusiastic Alpine climber. He was a member of the Alpine Club, and said to a friend on the day of his departure to the front, "I feel exactly as if I were setting forth on a Swiss climbing holiday, with the thought that, this time, there is rather more risk than before." Five years ago he married Doris, daughter of Mr. J. R. Woodward, of Erdington, Birmingham, and leaves a widow and two children, the younger of whom is two months old.

Second Lieutenant Frank A. Lavender.

Second Lieutenant FRANK ASHLEY LAVENDER, South Staffordshire Regiment, who was killed on 14th March, in his thirty-first year, was the second son of the late Frederick William Lavender, J.P., and of Mrs. Lavender, of Queensville, Walsall. He was educated at Christ's Hospital, and was admitted as a solicitor in 1907. He practised at Wolverhampton and Walsall. Shortly after the outbreak of war he arranged with a brother solicitor to carry on his practice so that he might enter the Army. In November, 1915, he obtained his commission in the South Staffordshire Regiment, and went to the front in June, 1916.

Legal News.

Changes in Partnerships.

Dissolutions.

EDWARD HENRY COATES and ALFRED BRETT, solicitors (Coates & Brett), at Wetherby, in the county of York. March 11. The said Alfred Brett will continue the said business under the present style or firm of Coates & Brett.

JOSEPH EDMOND STACPOOLE and WILLIAM STACPOOLE (Stacpoole & Co.), 7, Union-court, Old Broad-street, London, E.C. March 24.

[*Gazette*, March 27.

Information Required

MRS. MINNIE MILLES (Widow of LEWIS GEORGE WATSON MILLES) (deceased).—To Solicitors and others.—Any person or firm who may be in possession of a will signed by the above-named Minnie Milles is requested to communicate with Messrs. Farrer & Co., 66, Lincoln's-inn-fields, London, W.C., solicitors, forthwith.

General.

Colonel William Edward Perham, Somerset Light Infantry (retired), of Flax Bourton Court, Somerset, solicitor, senior partner in the firm of Messrs. Perham & Sons, Bristol, left estate of gross value £15,436.

Having received no definite reply from the Local Government Board as to their protest against the action of the local military representative in notifying them beforehand of his intention to appeal against their decisions in a considerable number of pending cases, the tribunal at Gillingham, Kent, abandoned their sitting last Saturday. Lord Rhondda had urged on the tribunal the importance of carrying on and had promised to lay the matter before the War Office. About fifty cases, many of which should have been disposed of on 10th March, are in abeyance.

In a letter to the *Times* of the 28th inst., "Shipowner," writing from Liverpool, says: I was much interested to read the letter by Mr. S. C. Chambers in your issue of 12th inst. His contentions seem to me quite correct, and I would like to add that the carrying of guns by merchantmen is so established by custom that even to the present day the form on which steamers are cleared at the Custom House when ready for sea calls for insertion of the number of guns carried. This also applied until quite recently to other official forms required to be used in connection with reporting and clearing at the Customs and registering the sale or purchase of vessels by the Registrar of Shipping.

In the House of Commons, on the 22nd inst., Mr. G. Roberts, replying to Mr. Duncan Millar, said: The Board of Trade have now assumed control of all the collieries in Great Britain and Ireland, and a Department has been set up under the Controller of Coal Mines to exercise this control. An Advisory Board representative of the coalowners and the miners in the various districts has been attached to the Controller. It is not proposed generally to interfere in the actual management of the undertakings by their owners, who will be responsible to the Government for the safe and efficient working of the properties. It is also not proposed to interfere with the machinery already set up in the various districts for dealing with disputes. The Controller of Coal Mines is now dealing with the question of the distribution of supplies with a view to securing economy of transport and of consumption of coal. The financial arrangements arising out of the control are receiving very careful consideration, but I am not at present in a position to make a statement on the subject.

In a letter to the *Times* of the 29th inst., "Economy" says:—The War Office has recently invited members of the Bar, over military age, to offer their services as salaried Military Representatives on Tribunals in England and Wales, an invitation which has been very largely responded to. The duties which these representatives have to discharge are of a purely civil character, and involve no military training, yet the War Office, when making these appointments, imposes upon the persons selected a military rank, necessitating the provision of an expensive uniform, which, in the circumstances, would appear to be a waste both of money and much-needed material; and more particularly so when we recall the fact that at the present time a large number of those appearing as Military Representatives before the Tribunals are professional men and others who have received no such distinctive treatment, but who discharge these duties, no doubt quite satisfactorily, in a purely civil capacity. Truly the expenditure may be a small one, but economy in

small things is a quality which, in these days, ought not to be treated as negligible, even in a Government Department.

The *Times* special correspondent at Amsterdam, in a message dated 26th March, says:—The *Nieuwe Courant*, of The Hague, says that the Dutch Government has informed the United States Government, in reply to a request for information, that foreign armed merchantmen, being, according to Dutch neutrality decisions, on the same footing as warships, will not be admitted to Dutch ports. The newspaper explains that this results not from the Dutch neutrality declaration of August, 1914—which refused admission to warships, or vessels on the same footing as warships, belonging to a belligerent—since the United States is not yet a belligerent, but that it results from the ordinance of 30th July, 1914, which provided that warships (or ships placed on the same footing) of foreign powers should not be admitted to Dutch territorial waters.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Neville.	Mr. Justice Eve.
Monday] April	2 Mr. Jolly	Mr. Farmer	Mr. Church	Mr. Bloxam
Tuesday	4 Greswell	Synge	Farmer	Jolly
Wednesday ..	3 Bloxam	Church	Goldschmidt	Synge
Thursday	5 Goldschmidt	Greswell	Leach	Farmer

Date.	Mr. Justice Sargant.	Mr. Justice Astbury.	Mr. Justice Younger.	Mr. Justice Peterson.
Monday April	2 Mr. Goldschmidt	Mr. Greswell	Mr. Borrer	Mr. Synge
Tuesday	3 Bloxam	Church	Leach	Borrer
Wednesday ..	4 Farmer	Leach	Greswell	Jolly
Thursday	5 Church	Borrer	Jolly	Bloxam

The Easter Vacation will commmce on Friday, April 6th, and terminate on Tuesday, April 10th, inclusive.

The Property Mart

Forthcoming Auction Sales.

April 17.—Messrs. HAMPTON & SONS, at the Mart; Freehold Town Residence (see advertisement, back page, this week).

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—FRIDAY, Mar 16.

T. F. CHAMBERS & Co, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before April 30, to send their names and addresses, and the particulars of their debts or claims, to Wilfrid Smalles, Ocean chmbrs, Lowgate, Hull, liquidator.

HAMBLE RIVER LUKE & Co, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before April 3, to send in their names and addresses, and the particulars of their debts or claims, to Frederic William Davis, 95-97, Finsbury pavement, or Harold Fitch Kemp, 36, Walbrook, liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette—TUESDAY, Mar. 20.

AMBROSE & SARGENT LTD.—Creditors are required, on or before April 21, to send in their names and addresses, and the particulars of their debts or claims, to Daniel James Sargent, 25, Bourne av, Salisbury, liquidator.

HERBERT HANES, LTD.—Creditors are required, on or before April 21, to send in their names and addresses, and the particulars of their debts or claims, to Joseph Walter Vincent F. C. A., 6, Holborn viaduct, liquidator.

MICHAELSEN, WRIGHT & CO, LTD.—Creditors are required, on or before April 30, to send their names and addresses, and the particulars of their debts or claims, to Max Michaelsen, 59 Eastcheap, liquidator.

PERCY TYRE & RUBBER CO, LTD.—Creditors are required, on or before May 1, to send their names and addresses, and particulars of their debts or claims, to Edward McLellan, 6A, Devonshire sq, liquidator.

PESSERS, MOODY, WRAITH & GUBB (1914) LTD.—Creditors are required, on or before May 1, to send their names and addresses, and the particulars of their debts or claims, to Henry McLellan, 6A Devonshire sq, liquidator.

JOHN SAINT & SONS, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before April 16, to send their names and addresses, and particulars of their debts or claims, to Mr. Lambert Geeson, The Quay, St Ives, Hunts, liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—FRIDAY, Mar. 23.

ANGLO-NEVADA CO, LTD.—Creditors are required, on or before May 4, to send their names and addresses, and the particulars of their debts or claims, to James William McRobert and Stephen Oliver, 24, Grainger st West, Newcastle upon Tyne, liquidators.

CASTLE STREET PICTUREDROMS (OXFORD) LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before April 30, to send their names and addresses, and the particulars of their debts or claims, to Ernest Auburn Chambers, 15, Dalton st, Manchester, liquidator.

MANCHESTER WAREHOUSEMEN CLERKS' RESTAURANT CO., Ltd. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before April 30, to send their names and addresses, and the particulars of their debts or claims, to Fred Hargreaves, 55, Cross st, Manchester, liquidator.

SWAN LINE, LTD.—Creditors are required, on or before May 5, to send their names and addresses, and the particulars of their debts or claims, to John Askew Dixon and Thomas Wallace, 3, Queen st, Newcastle upon Tyne, liquidator.

WOMEN MUNITION WORKERS LTD.—Creditors are required, on or before Mar 29, to send in their names and addresses, and full particulars of their debts or claims, to Edith Agnes Bryson, 31, Leinster gdns, Lancaster Gate, liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—TUESDAY, Mar. 27.

WILLIAM BLISS & SON, LTD.—Creditors are required, on or before May 24, to send their names and addresses, and the particulars of their debts or claims, to Arthur Henry Gibson, 39, Waterloo st, Birmingham, liquidator.

MILVERTON GAS LIGHT & COKE CO, LTD.—Creditors are required, on or before April 15 to send their names and addresses, and the particulars of their debts or claims, to J E Goodland, 4, The Bridge, Taunton, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, Mar. 16.

New Age Press, Ltd.
Louis De Reefer Co, Ltd.
Patent Small Rolling Umbrella Co, Ltd.
J. & J. King, Ltd.
Glydo Manufacturing Co, Ltd.
Improved Casting Syndicate, Ltd.
Bioscope Film & Supply Co, Ltd.
Boekbinder & Sons, (1915), Ltd.
S. C. Barnes, Ltd.
Brixham Steamship Co, Ltd.
Croham Steamship Co, Ltd.
Anchor Electric Co, Ltd.
Aked, Parkinson & Co, Ltd.
Leeds Coal Consumers' Association, Ltd.
Kresser, Ltd.
Florentine Flooring Co, Ltd.

London Gazette.—TUESDAY, Mar. 20.

Dronfield Coal Co, Ltd.
Co-operative Banking and Investment Society, Ltd.
Ambrose & Sargent, Ltd.
Sierra Leone Products, Ltd.
Swinglehurst & Co, Ltd.
Carnarvonshire & Merionethshire Steamship Co, Ltd.
"Ruthin Castle" Ship Co, Ltd.
Contract Development Trust, Ltd.
Pictorial Printing & Publishing Co, Ltd.
Glastonbury Athletic Ground, Ltd.
Mid-Surrey Motor Co, Ltd.
Michaelsen Wright & Co, Ltd.
Novera Metal Co, Ltd.
Vigo Brick Tile Land Investment & Advance Co, Ltd.
Peruvian Cotton Manufacturing Co, Ltd.

London Gazette.—FRIDAY, Mar. 23.

Phœnix Stamping & Enamelling Co, Ltd.
Bond, Brown & Bond, Ltd.
Electra Palace, Royton, Ltd.
Women Munition Workers, Ltd.
Manchester Warehousemen & Clerks' Restaurant Co, Ltd.
Kilburn Liberal & Progressive Club, Ltd.
Huguenot Steamship Co, Ltd.
Tyne Tug Co, Ltd.
Victoria Dyeing, Raising & Finishing Co, Ltd.
Minerals Separation American Syndicate (1913), Ltd.
London Motor Hire Co, Ltd.
Autovacuum Refrigerating Co, Ltd.

London Gazette.—TUESDAY, Mar 27.

Wellesley, Ltd.
Great Oriental Gold Mines, Ltd.
Stalybridge Masonic Club, Ltd.
Robert Harkness, Ltd
Empress Tea Stores, Ltd.
Cross Steam Shipping, Co, Ltd.
William Bliss & Son, Ltd.
British Officers' Clubs in France, Incorporated
Mirfield Masonic Hall Co, Ltd.
Rathbone's Dental Surgeries, Ltd.
Lock, Marks & Co, Ltd.
Mayfair Fashions Co, Ltd.
Pryor-Young Wheel Syndicate, Ltd.
Milverton Gas Light & Coke Co, Ltd.

Winding-up of Enemy Businesses.

London Gazette.—TUESDAY, Mar. 20.

JOSEPH WINTERHALTER.—Creditors are required, on or before April 12, to send their names and addresses, and the particulars of their debts or claims, to Henry Rees, Government bldngs, St. Mary's st, Swansea, controller.

JOHN PHILIP WILD.—Creditors are required, on or before Mar 28, to send full particulars of their debts or claims, by prepaid post, to J. Walter G. Hill, 9, Bennett's hill, Birmingham, controller

London Gazette.—FRIDAY, Mar. 23.

PR GRESS MACHINE CO, LTD.—Creditors are required, on or before April 30, to send their names and addresses, and particulars of their debts or claims, to Frederick Womersley, 77, King st, Manchester, controller.

WUCHNER & MULLER.—Creditors are required, on or before April 30, to send their names and addresses, and particulars of their debts or claims, to Frederick Womersley, 77, King st, Manchester, controller.

CARL ZEISS (LONDON) LTD.—Creditors are required, on or before April 23, to send their names and addresses, and particulars of their debts or claims, to Louis H. Weatherley, 14, George st, Mansion House, London, controller.

London Gazette.—TUESDAY, Mar. 27.

MEIROWSKY & Co.—Creditors are required, on or before April 23, to send full particulars of their debts or claims, by prepaid post, to Gerald Henry Warmington, 33, St. Swithin's ln, controller.

Creditors' Notices.

Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette—FRIDAY, Mar. 23.

ABBOTT, EDWARD, Grenade st, Limehouse, Milk Contractor May 1 Bond, Leadenhall st

AIREY, HENRY WILLIAM, George ln, Lewisham, Butcher May 11 Hays & Co, Clement's ln, Lombard st

APPS, JOSEPH HENRY, Probus, Cornwall, Carpenter April 21 Hancock, Truro

BAIRNSFATHER, GEORGINA, Carlisle mans, Victoria st April 30 Lawrence, Essex st, Strand

BARNES, RICHARD, Avenue rd, Crouch End, Solicitor April 12 Barnes, Finsbury sq

BARNETT, MYER, Lamb st, Spitalfields, Fruit Salesman April 10 Francis & Veneer, 51 Bothnate

BARR, Sir DAVID WILLIAM KEITH, KCSI, Onslow gdns, Kensington May 11 Hays & Co, Clement's ln, Lombard st

BATTISCOMBE, CHRISTOPHER WILLIAM, Canterbury, Brewer April 23 Bracher & Son, Maidstone